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FEDERAL COAL LEASING—COMMISSION ON FAIR MARKET VALUE POLICY

HEARINGS

BEFORE THE

COMMITTEE ON ENERGY AND NATURAL RESOURCES UNITED STATES SENATE

NINETY-EIGHTH CONGRESS

SECOND SESSION

ON THE

REPORT OF THE COMMISSION ON FAIR MARKET VALUE POLICY FOR FEDERAL COAL LEASING

MARCH 21 AND APRIL 5, 1984

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FEDERAL COAL LEASING—COMMISSION ON FAIR MARKET VALUE POLICY

WEDNESDAY, MARCH 21, 1984

U.S. SENATE,
COMMITTEE ON ENERGY AND NATURAL RESOURCES,
Washington, DC.

The committee met, pursuant to notice, at 10:10 a.m., in room SD-366, Dirksen Office Building, Hon. Daniel J. Evans presiding.

Present: Senators Evans, McClure, and Bumpers.

Also present: Gary Ellsworth, deputy chief counsel for natural resources; and Linda Mason, professional staff member for the minority.

Senator EVANS. The committee will please come to order. The chairman unfortunately has been delayed and we have received word that he hopefully will be here shortly. I am pleased to open the meeting and to conduct the hearing at least initially until the chairman arrives.

The chairman does have an opening statement, which I will not read; I would not presume to read his opening statement, but would insert it in the record at this point and at such time as he arrives, he may well have comments to make.

Senator Wallop also has an opening statement which will be placed in the record at this point.

[The prepared statements of Senator McClure and Senator Wallop follow:]

OPENING STATEMENT OF SENATOR McCLURE

OVERSIGHT HEARING ON THE REPORT OF THE
COMMISSION ON FAIR MARKET VALUE POLICY FOR FEDERAL COAL LEASING
MARCH 21, 1984

GOOD MORNING. TODAY THE COMMITTEE ON ENERGY AND NATURAL RESOURCES IS CONDUCTING AN OVERSIGHT HEARING ON THE REPORT OF THE COMMISSION ON FAIR MARKET VALUE POLICY FOR FEDERAL COAL LEASING. THE COMMISSION AND ITS REPORT WERE REQUIRED BY CONGRESS IN THE SUPPLEMENTAL APPROPRIATIONS ACT AS A RESULT OF CONTROVERSY WHICH AROSE UPON THE RESUMPTION OF FEDERAL COAL LEASING AFTER A TEN YEAR MORATORIUM AND IN PARTICULAR THE DETAILS OF THE 1982 SALE IN THE POWDER RIVER BASIN. A MORATORIUM ON ANY FEDERAL COAL LEASING WAS IMPOSED DURING THE DELIBERATIONS OF THE COMMISSION AND CONTINUES TO BE EFFECTIVE UNTIL MAY 17TH OF THIS YEAR.

WHILE CONGRESS HAS CHOSEN TO IMPOSE THE EXISTING MORATORIUM AND STUDY OF THE FEDERAL COAL LEASING PROGRAM THROUGH THE APPROPRIATIONS PROCESS, THE TRADITIONAL EXPERTISE, AUTHORITY, AND JURISDICTION FOR DECISION-MAKING REGARDING MINERAL LEASING POLICY, INCLUDING COAL, RESTS WITH THIS COMMITTEE. IT IS MY HOPE THAT, BEGINNING WITH THIS HEARING TODAY, AND WITH FOLLOW-UP HEARINGS ANTICIPATED WITHIN THE NEXT FEW WEEKS, THE COMMITTEE WILL DEVELOP THE BASE OF INFORMATION NECESSARY TO DECIDE ON THE APPROPRIATE COURSE OF ACTION TO BE TAKEN BY CONGRESS. I WOULD HOPE THAT WHATEVER THE COMMITTEE MAY DECIDE, THAT NO FURTHER ACTION WOULD BE NECESSARY THROUGH THE APPROPRIATIONS PROCESS.

INITIALLY, I WOULD LIKE TO COMMEND THE COMMISSION AS A WHOLE, AND THE COMMISSIONERS INDIVIDUALLY FOR THEIR WORK ON THIS REPORT AND ITS RECOMMENDATIONS. WHILE YOU HAVE EXPERIENCED THE INTENSE CONTROVERSY WHICH HAS SURROUNDED THE FEDERAL COAL LEASING PROGRAM OVER THE DECADES, YOU HAVE PRODUCED A REPORT, NONETHELESS, WHICH IS OF INVALUABLE ASSISTANCE TO THE DEPARTMENT OF THE INTERIOR IN THE ASSESSMENT OF ITS PROGRAM AND TO THE CONGRESS IN ITS OWN EVALUATION. FOR THAT YOU ARE ALL TO BE COMMENDED, AND THANKED FOR YOUR DEDICATED PUBLIC SERVICE.

AT THE OUTSET, I WOULD LIKE TO EMPHASIZE TWO CONCLUSIONS BY THE COMMISSION WHICH WE MUST KEEP IN MIND DURING THE COURSE OF

THE HEARINGS ON THIS ISSUE. FIRST IS THE CONCLUSION CONCERNING THE PURPOSE OF THE FEDERAL PROGRAM:

> "THE PURPOSE OF THE FEDERAL COAL LEASING PROGRAM IS TO MAKE THE MAXIMUM CONTRIBUTION OF FEDERAL COAL TO THE NATION'S WELFARE. BESIDES EARNING REVENUES, THIS PURPOSE INCLUDES PROVIDING COAL TO CONSUMERS AT LOW PRICES, PROTECTING THE ENVIRONMENT, FURTHERING NATIONAL SECURITY GOALS OF REDUCING ENERGY IMPORTS, CONSERVING THE NATION'S COAL RESOURCES, AND TREATING RESIDENTS OF COAL-PRODUCING AREAS FAIRLY. THE FEDERAL GOVERNMENT'S MANAGEMENT OF ITS COAL RESOURCES DIFFERS FROM PRIVATE RESOURCE MANAGEMENT IN THAT A MUCH WIDER RANGE OF OBJECTIVES IS SOUGHT AND MUST BE RECONCILED." (P. 497)

IN THIS CONTEXT, THE COMMISSION MADE 30 ADMINISTRATIVE AND 6 LEGISLATIVE RECOMMENDATIONS OR JUDGMENTS, BUT STILL CONCLUDED THAT:

> "CONTINUED LEASING OF FEDERAL COAL IS IN THE NATIONAL INTEREST." (P. 498)

I AM PLEASED TO NOTE THAT ON MONDAY OF THIS WEEK, SECRETARY CLARK TRANSMITTED TO CONGRESS THE DEPARTMENT'S REVIEW OF THE COMMISSION'S RECOMMENDATIONS. THIS REVIEW HAS RESULTED IN THE DEPARTMENT SETTING IN MOTION A PLAN TO ADOPT 29 OF THE 30 ADMINISTRATIVE RECOMMENDATIONS OF THE COMMISSION AND A PLEDGE TO WORK WITH CONGRESS TO ADDRESS THE LEGISLATIVE ITEMS. IN ADDITION TO THESE PROGRAMMATIC ISSUES, THE SECRETARY IS SEPARATELY CONDUCTING AN INDEPENDENT REVIEW OF THE PERSONAL CONDUCT OF INDIVIDUAL EMPLOYEES OF THE DEPARTMENT AND THE ADEQUACY OF THE DEPARTMENT'S REVIEW OF THAT CONDUCT. I STRONGLY SUPPORT THE ACTIONS OF THE SECRETARY TO DATE AND EMPHASIZE THE DISTINCTION HE HAS MADE BETWEEN PROGRAMMATIC AND PERSONAL CONDUCT ISSUES.

IT IS MY UNDERSTANDING THAT THE SECRETARY BELIEVES THAT IT WILL TAKE THE REMAINDER OF THIS CALENDAR YEAR FOR THE DEPARTMENT TO READJUST ITS COAL LEASING PROGRAM TO BE CONSISTENT WITH THE COMMISSION'S RECOMMENDATIONS. IT IS MY UNDERSTANDING THAT DURING THAT TIME NO LEASING WILL OCCUR. WHILE THIS LENGTH OF TIME CAUSES ME SOME CONCERN, IT IS REASONABLE, GIVEN THE NEED FOR INPUT FROM STATE, LOCAL AN PUBLIC SECTORS, AND THE NEED TO RESTORE PUBLIC CONFIDENCE IN THE PROGRAM.

OPENING STATEMENT BY SENATOR MALCOLM WALLOP , OVERSIGHT HEARING ON THE REPORT OF THE COMMISSION ON FAIR MARKET VALUE POLICY FOR FEDERAL COAL LEASING, MARCH 21, 1984

Mr. Chairman, I join you in welcoming the members of the Linowes Commission to this oversight hearing on the Report of the Commission on Fair Market Value Policy for Federal Coal Leasing.

Clearly federal coal leasing is not a simple issue. Its history is more one of stops than starts. Until 1960 there was little demand for federal coal and little leasing. Leasing activity grew during the 1960's, but in 1971 the Department of the Interior imposed what was supposed to be a short-term moratorium on coal leasing that ended up lasting 10 years. Coal leasing resumed in 1981, but as the result of questions about coal leasing procedures generally and in the Powder River Basin coal sale in Wyoming, Congress last year established the Linowes Commission. Its directive was to review and recommend procedures to ensure receipt of fair market value for federal coal leases. Congress also imposed a moratorium on federal coal lease sales during the Commission's review, to extend 90 days beyond the date of its report to Congress.

So I commend the members of this commission for taking on a difficult, emotional issue. Many of the members of this committee have had the pleasure of working with your chairman, Dr. Linowes, in the past when he chaired the Commission on Fiscal Accountability of the Nation's Energy Resources and worked with Congress to help enact the Royalty Management Act of 1982 to improve DOI's royalty management system and enforcement authorities. Those efforts were remarkably successful, and I hope we can be similarly successful in resolving the problems with the coal leasing program.

The wheels of change have already been set in motion. As the chairman noted,

two days ago the Department of the Interior sent Congress its report on the Linowes Commission's recommendations. Secretary Clark pointed out at the beginning of that report that the Department has conducted two separate reviews relating to coal leasing. First, it has completed its review of programmatic issues involving leasing procedures. As a result, the Department plans to incorporate all but one of the Commission's administrative recommendations, and to work with Congress on the legislative recommendations. I understand that this committee intends, in the near future, to hold another oversight hearing so that the Department can testify about its recommendations and plans for public review and implementation.

In addition, the department is separately reviewing all questions relating to the individual conduct of DOI employees during specific lease sales. I understand that this investigation is still ongoing.

There are a good many specific recommendations to be discussed here this morning and in the weeks and months ahead. Overall, I believe that it is essential that any and all problems with the federal coal leasing program be identified and resolved as soon as possible, to reestablish the credibility of the program in the public's mind and get on with the business of managing our nation's public lands and energy resources. The Commission has concluded that problems exist but that it is in the national interest to continue leasing federal coal. These are matters which are especially important to coal producing states like Wyoming, where jobs and state and local revenues and our environment are so clearly at stake. While I don't agree with all of the Commission's recommendations, specifically some of the legislative ones, I do believe we must correct problems and move ahead, and so I look forward to the Commissioners' testimony.

OPENING STATEMENT OF HON. DANIEL J. EVANS, A U.S. SENATOR FROM THE STATE OF WASHINGTON

Senator EVANS. I do want to welcome the distinguished panel we have before us. This has not been a process conducted behind closed doors and without public notice. There has been a remarkably fine product, at least from my own personal viewpoint, and you have contributed widely to the country and to the Federal Government and for that we are grateful.

We do appreciate your willingness to come, all of you, some from a long distance and look forward to hearing from you and to how we proceed to ensure that recommendations do get carried into effect. I understand there is some considerable movement along that line already.

With that, I would like to turn it over to the panel, and, Chairman Linowes, I presume you would like to start.

STATEMENT OF HON. DAVID F. LINOWES, CHAIRMAN, COMMISSION ON FAIR MARKET VALUE POLICY FOR FEDERAL COAL LEASING, ACCOMPANIED BY HON. DONALD C. ALEXANDER, HON. ANDREW F. BRIMMER, HON. RICHARD L. GORDON, AND HON. JULIA M. WALSH, MEMBERS OF THE COMMISSION ON FAIR MARKET VALUE POLICY FOR FEDERAL COAL LEASING

Mr. LINOWES. Thank you very much, Mr. Chairman. With your permission, I would like to submit the written testimony for the record and for the presentation this morning merely read portions of that testimony and summarize and comment on most of the rest of it.

Of course, I thank you for inviting us to be here. We have devoted considerable effort into the preparation of this report and it is always gratifying to find the kind of response that we heard from you this morning.

After 6 months of review, the Commission found that the management of the Nation's coal leasing program has been confusing. It has been occasioned by frequent changes in direction and controversy. For years it has been unresponsive to the needs of the consumer, the coal-mining States and the Federal Government to permit long-range economic and environmental planning.

The continuing conflicts among the coal industry, the railroads, the environmentalists, the Congress and the administration have contributed to this discouraging state of affairs.

Many of the problems have resulted from the manner in which Federal laws interacted with complex and conflicting regulations and poorly defined management procedures. Some laws were based on questionable assumptions about the coal leasing market. Others resulted from a skepticism by the Congress of Interior Department administrators.

We found many technical deficiencies in the computations for the appraisals themselves. We found that several administrators acted unwisely in making significant decisions without adequate documentation. Their actions in some cases involved many millions of taxpayer dollars and had important impacts on the environment. These, of course, created suspicions of wrongdoing resulting in a moratorium on coal leasing, as you know.

Our rather voluminous report, some 639 pages, contains 36 recommendations, accompanied by judgments and conclusions. They focus on the improvement of the program. These recommendations, of course, point up the specifics of the deficiencies that we found in our review.

The recommendations are grouped more or less by function, as is our report. We have a group dealing with leasing levels, a group of recommendations dealing with tract selection, another group addressing sales procedures, then a group of recommendations dealing with appraisal methods, and then those dealing with the organization of the coal leasing function itself and its management.

Then, of course, there are several statutory suggestions that we make. I have in my prepared statement a listing of those recommendations. What I would like to do is merely identify the key words in those recommendations to give you the thrust of what we believe should be done in order to be helpful in improving the management of the coal leasing program.

When it comes to leasing levels, we feel that the program should be predictable and should be stable, which it is not now. We feel the States should be very much involved, much more so than has been true in the past. We feel the Government should not seek to raise prices by holding coal leases off the market, nor to depress prices by flooding the market.

We feel in the selection of tracts there should be a diversity so that we can encourage competition. We feel one of the very important ones, because it does deal with the general level of leasing which has had so much public exposure recently, is that levels should be determined so the Government will receive a fair return. If you are following the written testimony, that is on page 3; we do code each of the recommendations by chapter and Roman numeral and the number in that chapter. That would be chapter 3, No. V.

We suggest that the Government point toward receiving a fair return and we advisedly stay away from fair market value, because there is confusion as to just what that term means. Our recommendation states that the Government should receive a fair return consistent with other public policy objectives. We recognize the Government must take into consideration efficient land use and environmental planning and conserving for the future.

We feel that preference right lease applications should be cleaned up. They have been around for a long time. They represent some 7 billion tons of coal and they should be, their resolution should be expedited within a couple of years.

When it comes to selecting tracts, our recommendation suggests that the tracts be so selected that the characteristics will enhance the interest of the coal industry. The Interior Department should sponsor more drilling and cooperative drilling. We feel there should be cooperative leasing and there should be an exchange of Federal and non-Federal coal tracts in order to bring about and stimulate a broader interest in the property that we have for sale.

What we are saying here in terms of the selecting of tracts is that we should broaden out the spectrum a bit. It has been a little too narrow, a little too concentrated on the approach that has been used in the past.

When it comes to the sales procedures, we feel there should be a distinction made between new production tracts and maintenance or bypass tracts. There has not been enough of that distinction made in the past, both, administratively and legislatively. As a matter of fact, there has been no distinction at all of late.

We feel, because the question has been raised that we should stay with inviting bonus bidding rather than getting into a bidding competition on royalties which some private sector landowners do in some States.

There should be intertract bidding. That is just a device for putting more on the market than you have announced that you will accept, but you select those bids that are highest and then cancel out the rest.

We feel the Interior should be resourceful and deal with a variety of auction techniques. Further, we should break away from the present minimum submissible bids on a per acre basis, which it is today, and move to an amount per ton and that should be broken down on a regional basis rather than on a national basis. Regional is very important because you do have different qualities of coal and different approaches in order to get the coal out of the ground.

An important area, we feel because 80 percent of the sales receive only one bid, the administration should have authority to negotiate a fair price after they have tried and been unsuccessful in developing enough competition to make the auction process effective.

We feel that industry bids that are received are an important source of information. That question was raised. Let me clarify it. We do this throughout our recommendations wherever there seems to be some equivocation within the department to take our stand for the guidance, if the department looks for guidance, from the Commission. We feel that any data obtained should be secure.

There are talks of some leaks of information and, again, that is almost a given, but we felt we had to express it in view of the nature of the problem.

For various appraisal methods, another important function, we feel basic methodologies are widely accepted in the industry, but the input data, in particular the model design and analysis need considerable improvement. We found many, and I stress many areas in the appraisals that we examined.

Regarding the so-called small business tax adjustment. I personally still cannot understand how logically they can deal with that. Interior has removed that prior to the creation of the Commission, but we want to be sure that it remains dead and does not rear its head again.

We feel that in developing comparable sales adjustment procedures, that is when you obtain the sales data of one tract and adjust that for the tract you plan to put on the market, you should take into consideration matters such as production rate and shipping ratio and coal quality.

There were some issues raised by at least one of the reviews performed of the transactions at Powder River. We feel that there should be a valuation placed on all coal lands, regardless of whether or not it is useful for only the one party and based on the, if you will, intrinsic, and maybe that is not the correct word to use, value

of that coal. They had used, and Interior itself had already changed before this recommendation was developed, what they had referred to as the Joseph rule, which in effect said that inasmuch as nobody else would want to bid on some of the coal leases, because they are so dominated by one party, it has zero value in effect. We feel that has no place in representing the responsibility that Interior has.

We feel that the regulations should require the reporting of details of these assignments and we also urge that information regarding prices and other terms of private transaction should be made available by industry representatives if they are to bid on Federal coal leases. This is the only recommendation, incidentally, that the Department of Interior did not accept. I personally do not find the reasons for not accepting it very persuasive and I know other commissioners have other opinions, because I spoke to them prior to this meeting.

We feel, clearly, the Interior Department should enhance its capacity to perform appraisals. That capacity has been allowed to deteriorate, because of the relative inactivity or because of incompetence we do not know. It is not important to us. What is important is that there should be an enhancement of that ability, and if necessary bring in outside appraisers. I do not believe the Department has ever brought in an outside appraiser.

Now, we come to the group of recommendations that would require legislation. There are six at least in this chapter, and there are another one or two. The 10-year diligence development requirement we feel should not require that the lease be cancelled at the end of that time but allow a 10-year extension with the payment of advance royalties on an escalating basis so it does hurt the lessee to remain inactive. He should get going. That incidentally requires legislation as does the one dealing with pre-1976 leases, where we feel this advance royalty device should take effect with the expiration of that pre-1976 lease and not be given another 10-year free ride.

The question of the consent of qualified surface owners, we hear time and again that this was an impediment to attracting the vigorous bidding. We felt Congress should reexamine that issue, whether there should not be some kind of restraint placed on just how much is demanded by those that hold the surface owner rights.

Also, we feel that because royalties are fixed by law to 12.5 percent, which incidentally had been considered high and perhaps still does as an average represent higher than what transpires in the private sector and even by States, and for some mines, of course, such as Powder River that is such an efficient, profitable type of operation up there that, in my judgment, 12.5 percent is a minimum, but for other mines in other areas where the seams are very small, 3 or 4 feet as opposed to 70 feet and 150 feet of the Powder River, the administration should have the opportunity to reduce the royalty rates.

The issue of severance taxes is discussed extensively in our report. The only stand we took in terms of a suggestion to Congress was that we not be carried away and in effect force an increase in royalty payments by virtue of computing the royalty payments on the value of the coal plus the severance tax. When you are running

30 percent severance tax, that can become very burdensome and we heard testimony to that effect.

There was so much concern about unfairness in shipping that we felt it would be appropriate to suggest to Congress that a review be made as to whether or not there is discrimination of a nature that could be considered as anticompetitive by the coal industry.

The CHAIRMAN. Mr. Chairman, I wonder if before Mr. Linowes goes to the next section of his statement if I might be permitted to interrupt. I apologize, both, for being late and for the interruption, but the chairman of the Republican conference has had to make arrangements and has to continue to make arrangements for the President's business and I am going to have to leave for that reason. But I do not want that to subtract at all from my respect for the members of the Commission, all of the members' contributions and you particularly, Mr. Chairman, the contribution you have made in trying to straighten out and bring some order and public understanding to the questions that surround the coal leasing program.

I think that perhaps the recommendations you have made that have been embraced by the Secretary of the Interior have borne measurable fruit already as measured by the absence of members at this hearing. If you had not made those recommendations, and if they had not been embraced, this room would be full.

The fact that members apparently do not find it necessary to come and talk to you or question you this morning and the fact that the press has not found it necessary to cover this hearing in exquisite detail would indicate to me that you have done a remarkably effective job and that the Secretary and the administration are to be commended for accepting the recommendations you have made.

Again, I thank you very much. Mr. Chairman, I would ask that the statement of Senator Wallop be introduced in the record immediately following my opening remarks.

Senator EVANS. Without objection, so ordered.

The CHAIRMAN. Thank you again, all of you. I very much appreciate what you have done.

Mr. LINOWES. Shall I continue, Mr. Chairman?

Senator EVANS. Yes, indeed.

Mr. LINOWES. It is very brief, the rest of it, because the final group of recommendations deals with organizations and management and here it is really an in-house type of thing, and incidentally it appears from the review that was prepared by the Department of the Interior they have accepted and are already proceeding, and are fairly well along in proceeding, with having accepted those recommendations. But just a thumbnail sketch of what is involved there, we do feel that the various units that identify the tracts and supposedly coordinate what is going on around the country be substantially strengthened that there should be a uniform appraisal method. It apparently has been given some lipservice. We feel the sales panels, in particular which make the recommendations for acceptance or rejection, be considerably strengthened. The one area, point there, the recommendation that I personally feel strongly about is that the inspector general should conduct periodic audits of the Federal programs.

He has not been doing so and we feel that should be implemented promptly.

Mr. Chairman, I believe the Commission's recommendations are realistic and achievable. They are designed to encourage three overriding aims, coal lease sales that are competitive, coal leasing policy that is stable and coal lease planning that takes into account the diverse objectives of the many parties with a stake in the Federal coal management program.

But these aims, in my judgment, can only be achieved through cooperation among the Department of the Interior, the Congress, the environmentalists, the coal industry and railroads. I use the term cooperation strenuously, if you will. I do not believe in my own judgment we have had this in the 20th century. So it goes back a long way, which has not helped the planning by any of the interested parties.

The recommendations, I respectfully suggest, provide a framework for such cooperation.

I appreciate this opportunity to present our findings and now the other Commissioners may have some prepared comments, after which I shall be pleased to respond to any questions.

[The prepared statement of Mr. Linowes follows:]

TESTIMONY OF DAVID F. LINOWES

CHAIRMAN, COMMISSION ON FAIR MARKET VALUE POLICY

FOR FEDERAL COAL LEASING

Before the Senate Energy and Natural Resources Committee

Dirksen Senate Office Building - Room 366

March 21, 1984 10:00 a.m.

Mr. Chairman, thank you for inviting us to appear before the Senate Energy and Natural Resources Committee this morning to discuss the report of the Commission on Fair Market Value Policy for Federal Coal Leasing, which was presented to the Congress and to the Secretary of the Interior on Friday, February 17, 1984.

After six months of review, the Commission found that the management of the nation's coal leasing program has been confusing, occasioned by frequent changes in direction and controversy. For years it has been unresponsive to the needs of the consumer, coal-mining states, and the nation's needs for stability to permit long-range economic and environmental planning.

Continuing conflicts among the coal industry, railroads, environmentalists, Congress, and the administration have contributed to this discouraging state of affairs.

Many of the problems have resulted from the manner in which Federal laws interacted with complex and conflicting regulations and poorly defined management procedures. Some laws were based on questionable assumptions about the coal leasing market, others resulted from a skepticism by the Congress of Interior Department administrators.

We found many technical inadequacies in appraisal computations. Several administrators acted unwisely in making significant decisions without adequate documentation. Their actions, in some cases, involved many millions of taxpayer dollars and had important impacts on the environment. These created suspicions of wrongdoing, resulting in a moratorium on coal leasing.

Our 639-page report contains 36 recommendations, accompanied by judgments and conclusions. Those recommendations follow.

RECOMMENDATIONS

(The recommendations are listed under the respective chapter heading in which they may be found in the report. The numerals following each recommendation refer to the chapter number and the order of each recommendation as it appears within that chapter.)

Federal Coal Leasing Levels

The Government should establish and announce in a timely fashion a coal leasing schedule to promote predictability and stability of Federal leasing actions. In doing so, the Government should have flexibility to change the timing of lease sales and the quantity of coal offered based on its assessment of emerging market conditions. (III-1)

To maintain a responsive and orderly coal leasing process, the States, through their participation in the Regional Coal Teams and the Federal-State Coal Advisory Board, should continue to play a signifi-

cant role both in establishing leasing levels and in setting leasing schedules. The inclusion of State personnel in providing staff support to the Regional Coal Teams is encouraged. (III-2)

The Government should not seek to raise the price above the competitive market level by limiting the amount of coal that Federal leasing policies make available to the market. But neither should it lease so much as to flood a depressed market. (III-3)

The Government should seek to provide adequate diversity in quantity and quality of Federal coal lease holdings offered for sale, to encourage active competition among mining companies because of the benefit to consumers such competition may produce. (III-4)

The quantity of coal leased should be determined so the Government will receive a fair return consistent with the achievement of other public policy objectives, such as promoting efficient land use and environmental planning and conserving appropriate amounts of coal for the future. (III-5)

Because appraisal of the adequacy of coal leasing is critically dependent upon the extent to which pending preference right lease applications are granted and the Interior Department has proceeded very slowly in this area, review of these applications should be rapidly completed, preferably within the next two years. Stress should be on those areas in which a lease sale is scheduled in the next year or so. In deciding on the appropriate level of future coal

leasing, the amount that might be provided through preference right leasing should be taken into account. (III-6)

Selecting Tracts for Coal Leasing

Tracts should be selected in such a manner that their characteristics will enhance the attainment of fair market value. (IV-1)

The Interior Department should sponsor more drilling for use in tract delineation and it should encourage cooperative drilling in which any additional firms could participate by paying a pro-rated charge. (IV-2)

Cooperative leasing procedures are desirable to obtain logical mining units that may be reasonably expected to receive greater bidding competition than fragmented coal holdings. (IV-3)

The exchange of Federal and non-Federal coal tracts should be pursued more vigorously, but in a careful and prudent manner, to consolidate Federal and non-Federal coal lease holdings of equivalent value into logical mining units. (IV-4)

Coal Lease Sales Procedures

The Government should have leasing policies that distinguish between new production tracts on the one hand and maintenance and bypass tracts on the other. (V-1)

In the conduct of lease sales the Government should continue to rely on bonus bidding. (V-2)

Intertract bidding in appropriate cases is a desirable method for leasing Federal coal. (V-3)

To promote more competitive bidding, the Government should test the feasibility of and experiment with a variety of auction techniques. (V-4)

Minimum submissible bids should be established on a regional basis. This minimum should be expressed as an amount per ton. (V-5)

Wherever possible, leases should be sold on a competitive basis. However, where reasonable efforts to obtain competitive bids have failed, the Government should have authority to negotiate a fair price. (V-6)

The industry bids received on tracts in a lease sale on which there was extensive competition, along with the Government's pre-sale appraisals, can constitute appropriate and important sources of information for post-bid acceptance and rejection decisions. (V-7)

The Government should take the necessary steps to ensure the security of confidential data prior to lease sales. (V-8)

Appraisal Methods

The Interior Department employs basic methodologies for estimating fair market value that are widely accepted in the conduct of appraisals by industry and Government. However, model design, input data and analysis should be improved. (VI-1)

A "small business" tax adjustment should not be made in computing appraisal value. (VI-2)

The comparable sales adjustment procedure should include factors, such as production rate, stripping ratio, or coal quality, that are identified as appropriate through a comprehensive review of appraisal techniques. (VI-3)

Where a Federal tract is of use to only one party and no competition is expected, estimates of tract value should be based on the value of the tract to the adjoining mine or coal owner, rather than the "competitive" or "stand alone" value. (VI-4)

Regulations should require lessees to report details of lease assignments. (VI-5)

Industry representatives wishing to bid on Federal leases should provide to appropriate Federal Government representatives information regarding prices and other terms of private coal transactions that may be needed for comparability analyses. The confidentiality of such information should be fully protected. (VI-6)

The Interior Department should enhance its capacity to perform appraisals. Preferably this should be done by expanding its own in-house resources. Where necessary, the Department should rely on outside appraisers, or some combination of these approaches. (VI-7)

Key Statutory and Related Factors

For post-1976 leases the 10-year diligent development requirement should continue in place but it is recommended that Congress consider allowing a 10-year extension to be provided on the payment of advance royalties on an escalating basis. This escalation basis should be determined at a level designed to stimulate timely development. (VII-1)

For pre-1976 leases the lessee should begin paying advance royalties at the time of the next lease readjustment, and on the same schedule as may be paid for post-1976 leases after 10 years from lease issuance. (VII-2) **

The requirement for consent of qualified surface owners before leasing should be maintained. However, in light of difficulties reported, it is recommended that Congress consider reexamining the need for limitations on payments for surface owner consent. (VII-3)

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* COMMISSIONER ALEXANDER RECUSED ON THIS ISSUE AND COMMISSIONER BRIMMER WAS NOT PRESENT FOR THIS VOTE.

** COMMISSIONERS WALSH, GORDON AND LINOWES VOTED; COMMISSIONER ALEXANDER RECUSED AND COMMISSIONER BRIMMER WOULD HAVE RECUSED HAD HE BEEN PRESENT.

It is recommended that Congress consider giving the Secretary of the Interior administrative discretion to reduce Federal royalty rates for coal tracts prior to a lease sale, where current royalties would have adverse effects on production of the resource. (VII-4)

The basis for calculating Federal royalty payments should be the F.O.B. price minus all state and local severance and similar taxes. (VII-5) *

To promote greater competition in transporting Federal coal and to achieve fair market value for Federal coal, it is recommended that Congress consider instituting a review to assess whether shippers of Federal coal are adequately protected from anticompetitive or discriminatory practices when slurry pipelines or other forms of transportation competition are insufficient. (VII-6) **

Organization and Management

The BLM Tract Delineation Teams should include an economic analysis capability. (VIII-1)

The BLM economic appraisal function should be organized with a centralized coordinating group for policy and analytic guidance and with regional rather than state teams for implementation. (VIII-2)

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* COMMISSIONER WALSH ABSTAINED FROM THIS VOTE.

** COMMISSIONERS WALSH, GORDON AND LINOWES VOTED; COMMISSIONER ALEXANDER RECUSED AND COMMISSIONER BRIMMER WOULD HAVE RECUSED HAD HE BEEN PRESENT.

The BLM centralized coordinating group for economic evaluation should develop and validate a uniform appraisal method. (VIII-3)

The BLM Sales Panels which make bid acceptance or rejection recommendations should be constituted in a way that assures the presence on those panels of persons with the background and capabilities of making judgments with respect to appraised values. (VIII-4)

The Inspector General should be directed to conduct periodic audits of the Federal Coal Program and necessary expertise should be contracted from the private sector where appropriate. (VIII-5)

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Mr. Chairman, I believe the foregoing Commission's recommendations are realistic and achievable. They are designed to encourage three overriding aims: coal lease sales that are competitive, coal leasing policy that is stable, and coal lease planning that takes into account the diverse objectives of the many parties with a stake in the Federal coal management program.

But these aims, in my judgment, can only be achieved through cooperation among the Department of the Interior, Congress, environmentalists, coal industry and railroads. The recommendations, I respectfully suggest, provide a framework for such cooperation.

I appreciate this opportunity to present our findings, and now the other commissioners and I will be pleased to respond to any questions.

Senator EVANS. We would be delighted to hear comments from any of the other Commissioners at this point.

Commissioner Gordon, I believe you have a prepared statement.

STATEMENT OF HON. RICHARD L. GORDON, MEMBER OF THE COMMISSION ON FAIR MARKET VALUE POLICY FOR FEDERAL COAL LEASING

Mr. GORDON. I have a long one, which I, of course, will not read, but have available for the record and I have a briefer one that I will read to you.

It is a pleasure to have an opportunity to express my views on the Commission's report. Different reasons motivated the decisions of the individual commissioners and I appreciate the chance to express mine.

The report presents both a program to improve existing coal leasing practices and severe criticisms of the practices of the former administrators of the program. I hope that the enemies of coal leasing will not be allowed to use our criticisms to perpetuate delays in coal leasing. I strongly advocate its rapid resumption. I was there when Chairman Linowes ratified these and the Interior Department so rapidly and so favorably responded to our report.

There are several aspects of the report that ought to be examined with particular care. First, the criticism of the leasing targets set by the former administrators was based on a variety of factors. As far as I am concerned, the primary justifications for presently restraining leasing relates to the lack of adequate staffing in the Department of the Interior.

I believe very strongly that the direct impact of high leasing levels on the price of leases has been grossly exaggerated, by the critics of leasing. In any case, the problem is the artificial effect of diligence requirements and I would like to see, as I will say later in the statement, some more radical changes in the law that allow us ultimately to move to greatly increased leasing levels.

I would also suggest that the question about how much the United States lost on coal sales looks like the wrong one to have asked. It puts undue stress on the essentially unanswerable query about a secondary issue, the quality of professional staff appraisals of the value of minerals. The interesting and clearly answerable questions relate to the overall quality of management at all levels.

We have clearly criticized this management and suggested what I think is the sensible ways to reform it and the critical tasks are to get on with the resumption of leasing and the implementation of reforms.

Finally, I personally greatly regret that the pressure of time and the intense criticism to which the Commission was subjected for both deserved and undeserved reasons prevented a deeper examination of the legal basis for coal leasing. We have given a thorough review of how best to live with the current system, which is the proper immediate concern. We had no time to look at the longer run.

Like most economists specializing in energy policy, I have grave reservations about the energy legislation of the past decade. It has seemed to impose unwise restrictions on the working of the energy

markets. The coal leasing amendments are unfortunately a prime example of this tendency to overregulate. For reasons discussed in my detailed statement for the record, I believe that at the very least the amendments were ill-advised in imposing both heavy royalties and an incredible series of limitations on coal lease holdings.

I similarly believe that the old prohibition on railroad lease holding is ill-advised. Therefore, I strongly believe that in the longer run these legal requirements should be reconsidered and I would hope replaced.

Moreover, I am becoming growingly sympathetic to the proposition that far too much land is federally owned and that a greater effort should be made to turn ranching, coal, and other lands over to the private sector with great rapidity. Thus, I feel there is an enormous number of policy issues that ought to be looked at in the longer run, more fully rationalizing public land policy.

Thank you.

[The prepared statement of Mr. Gordon follows:]

Statement on the Coal Commission Report
and Coal Leasing Policy

by

Richard L. Gordon

The final report of the Commission on Fair Market Value Policy for Federal Coal Leasing was one that I was pleased to accept. I believe it provides a useful discussion of the principles of coal leasing policy, how they have been applied, and how to improve it. I would stress that the report has two aspects and both should be recognized. We do clearly criticize the conduct of coal leasing prior to 1983. However, we also believe leasing is desirable. I hope the report will be the basis for rapidly resuming leasing on a sounder footing and not the rationale for a continued moratorium.

When I undertook the assignment on the Commission on Fair Market Value Policy for Federal Coal Leasing, I expected to be engaged in a sober review of the complexities of U.S. coal policies. I also anticipated that review would follow the well established precedent for past mineral studies of being ignored.

However, things turned out much differently. Nevertheless, I was right that we would produce a sound technical appraisal of the substance of federal coal policy. Obviously, much more occurred. On the way, we suffered "the slings and arrows of outrageous fortune" including "the law's delay" and "the insolence of office" and chose "to take arms against a sea of troubles" and [I hope] "by opposing end[ed] them." While these were not the high points of the Commission experience, our work cannot be understood without viewing these aspects of its work.

In addition to our concerns over the substance of Interior's coal leasing program, we had to deal with administrative failures. The practices appeared so poor that anyone concerned with maintaining standards of good conduct had to criticize severely the administration of coal policy under James Watt.

Ironically, it took a group drawn from the heart of the eastern establishment to uncover how people, supposedly representative of the so-called sagebrush rebellion, botched their efforts. Any long-time observer of U.S. energy and public land policy is well aware of the enormous conflicts involved. We have the traditional disputes among ranchers, farmers, environmentalists, and mineral developers in the West. Additionally, we have the increasingly convoluted problems of interstate energy rivalries.

Each region has been trying to reconcile its conflicting local goals. The western states have sought to strike a balance between benefiting from income from mineral production and recognizing the nonenergy interests of their states. Eastern states similarly have to reconcile their desires for cheaper energy with their fears over pollution and, in many critical cases, concern over local coal industries.

In a world in which too many people act without thinking, it is often helpful to provide reminders of the basic principles that have been neglected. In the coal leasing case, the critical warning is that whatever is done must be implemented with enormous tact and impeccable personal conduct and be backed up by thorough, intelligent, well

documented analyses. Clearly, the more radically you wish to change policies, the greater must be your devotion to these principles.

I have long been struck with T. S. Eliot's Murder in the Cathedral. In it, Eliot's Thomas a Beckett tells us that the greatest sin is to do the right thing for the wrong reasons. Interior Department energy policies under James Watt can be characterized as a crowning confirmation of Eliot's principle. The experience certainly convinced this advocate of accelerated coal leasing that a pullback was necessary to consolidate the situation and undo the havoc wreaked.

Unexpectedly then, a major thrust of the Coal Commission was to recognize and denounce the failures in managerial integrity that marred the coal leasing program. One contribution of the report was insistence that these failures be more fully investigated by agencies more appropriate for the purpose than an advisory committee operating under sunshine laws. We got documented evidence of ill-conceived behavior on the part of two middle level political appointees, of an incredibly inadequate performance by the Interior Department's Inspector General's Office, but nothing to substantiate conjectures in our minds and others that more remained to be uncovered.

Some may consider these criticisms the end point of the analysis and an excuse for delay. I consider them the first step in permitting immediate resumption of leasing. A critical problem in designing our report was to make our criticisms without depriving Secretary Watt's successors of the administrative flexibility essential to permit a workable coal policy. Pressures upon and within the Commission accentuated the tendency to stress criticism and consolidation.

The move to proceed conservatively had many implications, not the least of which was the development of a report that carefully limits itself to suggestions congruent with our reading of the prevailing Congressional policy towards leasing.

This approach had particularly radical implications for me. After the fact, I best can describe my participation as transforming myself from a vigorous advocate of radical reform of coal policy into an analyst of how best to satisfy the objectives apparently now prevailing. This seemed, then and now, the most appropriate role to adopt. It was based on the recognition that the external pressures on the Commission would under the best of circumstances have been severe. Even within the Commission, the tendency was towards incremental reform.

It was more appropriate to assist this process than to reiterate long held positions that I have amply presented before, will often present again (as I do in this statement), and were strengthened by the Commission experience.

The environmentalists and representatives of western nonmining interests mounted a campaign to suggest that my ideas reflected some sort of far-out thinking and to suggest I had biases produced by having been a consultant to various energy corporations. These combinations of internal and external pressures and a guess at what would be the most fruitful questions to explore caused me to be as impartial as possible instead of adopting my usual posture of advocate of extensive reform. In particular, good advice to Secretary Clark seemed the critical need. Even if Congress were anxious to reconsider coal

leasing laws, it did not critically require advice from the Commission on this score.

Obviously, total objectivity is an unattainable goal, and professional judgment could be moderated but not eliminated. At the very least, some stand must be taken about the many areas in which guidelines were unclear. The process of political compromise in Congress and in Commissions is noted for producing deliberately ambiguous statements that reconcile a wide variety of views. Many observers of legislation and the efforts of courts to interpret it point out that the "intent of Congress" is almost impossible to determine. A key contribution of the Commission's report necessarily was to provide the first coherent discussion of all the influences on coal policies, their apparent raison d'entre, and their effect.

The critical steps in our work were to devise the appropriate responses. The first set of proposals thus dealt with leasing levels. The epitome of the conclusions is that although leasing should quickly resume, leasing plans, in this area at least for the next two years, should be trimmed back from the goals that Watt left.

As I recognized on rereading the Commission report's discussion of leasing levels, it must be carefully and critically examined to get the full flavor of the debate and the hidden compromises contained. In particular, the treatment presents a wide variety of rationales for a showdown in leasing for the next several years. Some are tied to the procedural problems associated with heavy leasing. Interior's procedures and staffing to handle all aspects of leasing are seriously

deficient. In my opinion, it is these capability limitations that are the key reason for a leasing showdown.

In contrast, as a close reading of the report will show, arguments for reduced leasing because of the allegedly observable effects on coal prices and on the receipt of fair market value in lease sales have been grossly overstated by many critics of leasing policy. The only undesirable coal price and fair market receipt effects of heavy leasing are induced by the diligence requirement that one must produce within 10 years or lose the lease. In a few cases, it may pay to speed development to avoid this loss and thus create inefficiently large supplies. Such inefficiently early starts also reduce the value of the lease and thus what its federal government can expect to receive. Diligence requirements further lower lease bonuses because of the risk of losing the lease.

As sections of the report suggest, these effects may be quite small. I would prefer to cure the problem by eliminating diligence requirements rather than by reducing leasing levels.

The next key area of the report was dealing with receipt of fair market value. U.S. coal policy seeks to reconcile at least three inconsistent basic goals--(1) making coal available, (2) insuring a more equitable sharing of what economists call economic rents--and laymen call excess profits--the extra income accruing to a high quality mineral deposit, and (3) reconciling coal mining with other land use objectives.

Fair market value policy is primarily about the best way to share economic rents. Of course, we cannot view this problem in total

isolation. Pressing too hard to secure fair market value can reach the point at which intolerable barriers are set to attaining other goals. Too little coal can be leased. The most lucrative tracts may not be the most appropriate from an environmental viewpoint. Achieving the proper balance is what the report is all about.

The great paradox with which I was confronted was that my views as an analyst of how well existing policies were implemented were diametrically opposed to my views about what policy should be. I agree that Interior's approach to coal leasing paid inadequate attention to the legal requirements to secure fair market value. Interior proposed to imitate the policies of razor blade manufacturers selling razors cheaply to hook us on blades. Interior wanted to pay minimal attention to the revenues on the initial outlays on coal lease bonuses and reap profits on the subsequent royalty revenues. This seemed an overly casual approach to lease bonus amounts, given the Coal Leasing Amendment Act of 1976.

As a policy advocate, I believe fair market value is a vastly overrated policy goal. Of course, I do not propose that the coal industry keep the economic rents. However, I do see numerous more effective policies to redistribute the largess. In fact, I see too many!

I have generally found it difficult to understand why complaint of excess worship of laissez faire is so often publicized in a world whose greatest political problem is excess government intervention. In this case, I find it hard to support another effort to tax economic rents in a world that tends already to overtax them. This is particularly true

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of the present federal system that largely gives the money to the producing states. I would prefer those states to do all their own taxing if that's what they desire.

However, our apparent assignment was, not to change this policy, but propose how to implement it better. Thus, we worked on four key areas--tract delineation, tract appraisal, lease conduct, and Interior Department organization. The last area is probably by far the most critical and most difficult to implement of our proposals. As all who have viewed it closely have long known, the administrative problems of Interior are severe, deep-seated, and long-standing. The full nature of this problem and its causes, even if I knew them all, can not adequately be treated here.

Briefly, the structure became established in response to the diverse political pressures to which the Department is subject. The organizational failings are merely a mirror of the impossibility of agreeing upon unambiguous public land policies.

The result is an ill-integrated organization. The career staff includes every imaginable point of view. There are unabashed supporters of each of the different views about what Interior should do. There also are dispassionate analysts dedicated to sound work in their disciplines such as economics, geology, forestry, grazing, or recreation. The differences in outlook induced by these disciplines can be as vast as these produced by dedication to different interest groups' viewpoints.

The particular problem on which we concentrated was the defective prevailing organization for coal leasing. A few officials in

Washington were making the basic decisions without an adequate staff to guide them or to monitor activities in the field. The people in the field offices had great discretion, in fact too much discretion, about carrying out the details of the work.

One reason I tried within the Commission to make a distinction between the property of leasing practices and receipt of fair market value was that the debate on the latter had confused rather than illuminated the issue. The fundamental problem was ineptitude at the policy level. Appraisal of bid adequacy was an exercise in futility because it diverted attention from the key issues to an essentially unanswerable one about the losses. (Moreover, the ineptitude with which valuation of the loss was conducted established precedents that I felt were unwise to follow). The great giveaway charges proved, on scrutiny, to involve only examination of the quite secondary issue of how well the field staff handled its delegated responsibilities. This was only part of the problems and one of the less useful parts to explore in seeking to improve policy.

The General Accounting Office $100 million figure of losses in the Powder River sales was derived by estimating the under appraisal produced by the alleged revenue loss produced by three factors Interior used that GAO deemed erroneous--a correction for the rate of production, a correction for the possibility that the winning bidder might not be profitable enough to write off fully the lease bonus as current expense, and a fifty percent markdown on required bids on tracts most valuable to a specific bidder. The first two adjustments were devised by the staff in Casper, the third was suggested by the

Carter Administration. Whatever of these and other things the staff may have done wrong is secondary. The key indisputable point is that no one was keeping adequate watch.

The procedures were so defective that no one can determine accurately what the fair market value was and an estimate of the loss, if any, is thus highly speculative. (I will note, however, that my best guess is that the GAO figure was absurdly high and that its documentation was undeniably atrocious. GAO never could provide us with replicable figures on its analysis. I also have no idea how The New York Times inferred a $30 million shortfall from our estimates. That seems at least double the highest figures I would set). What we can say most clearly and usefully so that whatever success occurred was in spite of Interior actions.

The defective valuation procedures, the other deficiencies in planning, and the precipitious change in lease conduct procedures before the Powder River sales combine to represent a grossly inadequate effort to ensure receipt of fair market value. A direct examination of those procedural failings seems more fruitful than an effort to determine what losses, if any, occur.

The key organizational proposals are to develop a better structure for estimating tract values and for delineating tracts. This involves both beefing up the field staffs and creating a central coordinating body to provide supervision and to undertake more elaborate work to improve appraisal methodology.

Our recommendations for appraisal methods then largely consist of straightforward suggestions about the things this improved organization

can do. I hope that the result will be more sensible, better defensible estimates. The report stresses that we can only improve things, not give perfect forecasts. Only people wishing to stop leasing would argue perfect value estimates can and must be produced. In short, we want more reasonable work and not a new paper avalanche such as was caused by the call for environmental impact statements.

Our tract selection proposals seem even more straightforward. The key measures were creating a capability for evaluating how to delineate tracts so that more bidders would be interested and to encourage the generation of greater resource information. Here we clearly compromised. We allow for some mix between private and public exploration. On a pure legal basis, public exploration may have declined too much. I am personally sympathetic to the administration's move to greater reliance on cooperative private exploration.

Our proposals on sales procedures were fairly modest. The most radical departure from existing practice was suggesting that, under appropriate circumstances, negotiation could replace competitive bidding. This deliverately leaves open the question of whether appropriate circumstances can arise. Here, I am much more doubtful than GAO or the pronegotiation advocates on the Commission that appropriate conditions ever will arise. The proposal just keeps an option open.

We made what we hoped were only modest efforts at legislative reform. An attack on the present reliance on a combination of bonuses, royalties, and diligence requirements and its replacement with my preferred simpler system of relying only on lease bonuses could not be

appropriately mounted in the Commission. No one, including the rest of the Commission, seemed ready for anything so radical. Thus, we settled for proposing that relief from diligence requirements be given if companies agreed to paid sufficient advanced royalties.

We ducked several hearty perennial issues to disarm as much as possible the unfair criticism we faced. We were accused of bias and, variously, as seemed expedient, of exceeding and of falling far short of our mandate. (Along these lines I find myself distressed that those who wrap themselves in the banner of public interest can simultaneously insist that their every whim be satisfied and object to anyone even listening to the concerns of private industry. This is a strange view of civil rights).

In addition, the issues involved were ones on which ample records existed. Therefore, I decided to eliminate the slightest opportunity for criticism by refraining from voting on the issues of bans on further leasing of federal minerals by firm's failing to develop existing leases, continuation of the long-standing bans on railroad participation leasing federal coal, and the barriers to coal slurry pipelines. I also carefully avoided reminding the Commission about all those limitations in the coal leasing amendments on the acres of coal land that can be leased. It seemed gratuitous to use the Commission to reiterate what I have made well known--I don't care for any of these limits.

In short, what you got was an endorsement of careful resumption of leasing on a limited scale following our best interpretation of what Congress seems to want. The report, I hope, should greatly contribute

to getting coal leasing started again. I suspect that the experience will suggest further reform is needed, that privatation is a sound policy concept, and my views for broader reform will come into their own in due course.

I have already made available to anyone who seeks them, extensive writings suggesting that U.S. energy policy and, in fact, energy policy throughout the World has been heavy handed. I have been denouncing this heavyhandedness for many years. The biggest change has been the flipflop U.S. policy makers took in the 1970s. Energy policy's greatest consistency is that it is riddled with inconsistency. Nevertheless, it can be fairly characterized prior to 1973 as unduly protecting parochial U.S. energy industry and labor interests. Subsequently the thrust has been to harm excessively these energy industries. Neither extreme serves the public interest, and I never made any secret of my distaste for policies of both era.

The Coal Commission proved an inappropriate place for reiterating these views. We had enough extraneous pressures to handle without creating the impression that I was using the Commission as a forum to air my criticisms of the philosophy driving U.S. energy policy. I do greatly resent the suggestions that these views represent some sort of apology for the energy industries and, more generally, that something sinister was associated with honest, sometimes controversial views, held by some other Commissioners and some staffers.

My views, for example, are essentially those most trained economists reach when dealing with energy issues. Economists should know that actual markets obviously cannot work as well as the

intentionally idealized markets of our theories. Those who study real markets learn that in more cases than the proponents of regulation are willing to admit market forces do a good enough job that government controls are unnecessary. Just how far one wants to push this argument is unclear except that it always must be duly noted that government controls are needed in some cases. However, this is not critical here. Coal leasing policy as it has evolved in the 1970s involved an excessive increase in government intervention.

As noted, the Coal Commission deliberately does not deal with that issue. It largely considers how to live with the existing laws and presents suggestions about how to change them only when clear problems were recognized and the Commission felt that its views would be helpful to the discussions.

However, I still believe that far too many market restricting policies affect coal. This includes both the three areas on which I recused myself and the acreage limitation provisions of the coal leasing amendments that I refrained from asking the Commission to discuss.

I continue to see no good public service in continuing to ban railroad participation in leasing federal coal or to ban people from bidding on new leases for federal minerals because they failed to develop coal leases. The coal industry is allowing its fears of monopolization of transportation to distort its view of competition in coal. The railroads are unlikely to develop major positions in coal production. I would like to see coal slurry pipelines receive legal breaks comparable to those given railroads in their early years and oil

and gas pipelines today. Then we can better see whether the claims for slurries can be substantiated in the marketplace. The railroads are so fixated on their problems that they exaggerate the threat from slurries.

I also felt that the attacks on the Commission's review of these questions were excessive. As I noted, the same critics simultaneously were vigorous in damning us for failures not to consider every item in their policy agenda.

Returning to the reforms that I prefer, I still would argue first that the classic economic concerns about the distortionary effects of royalties should get much greater consideration in mineral leasing policies. I, in fact, would advocate abandonment of any reliance on royalties. This would make diligence requirements redundant. It would also eliminate undesirable impacts of lease levels on fair market value. Absent diligence requirements and royalties, higher leasing levels only can have beneficial effects on fair market value. Higher leasing can eliminate monopoly rents but not inefficiently increase production, decrease price, or lower economic rents. This is because competitive market forces prevent operation of those leases that are uneconomic to exploit.

To be sure, the fragmented nature of land holdings so amply discussed in the Commission report is a barrier to vigorous competition for leases. This, at worst, affects the sharing of rents, not its level. Moreover, the problem prevails whenever leasing occurs. Increased leasing at most contributes to the problem indirectly by

possibly lessening the ability to develop ways to increase competition for tracts.

Several key points should be noted, however. First, as already pointed out, there are other ways to tax the rents. Second, certainly in the absence of diligence requirements and possibly even with them, the threat of entry by rival bidders should do a great deal to force bids equal to fair market value. Third, other devices such as intertract bidding can further lessen the problems.

For these reasons, I am even more convinced the 1976 Coal Leasing Amendments were another of many unwise efforts to punish energy companies in frustration at the inability to punish the real villains--the member countries of OPEC. I want eventually to see simpler, sounder coal (and oil and gas) leasing policies.

More broadly, the experience has suggested that the serious efficiency problems caused by the U.S. policy of separating mineral rights from other property rights on the public lands and the endemic deficiencies of the Interior Department as an administrator of public lands necessitate thoroughgoing reform of public land policy. My recent readings have reenforced this view. Professor Steve Hanke of Johns Hopkins has kindly called my attention to his writings advocating turning substantial portions of the public lands over to the private sector. I have also examined Marion Clawson's Resources for the Future study The Federal Lands Revisited. While he tries to give a fair argument for both sides of the issue and seems himself to favor continuction of a substantial amount of public ownership, I found the

privatization case as he stated it more convincing than the retention case.

Among the critical considerations about privatization is that the present policy gives us the worst of all possible worlds. There is great willingness to add to the public lands, but great reluctance to appropriate the funds to administer them well. The separation of mineral rights from surface rights chronically creates problems for everyone. Mineral producers must get clearances from surface owners. As is less well recognized, surface owners have limited options in preventing mining. The most effective way to test what is the best use of land would be for all potential users to bid against each other for ownership. Where continued employment of the surface was the superior use, surface owners could buy and keep unused mineral rights. Present law precludes this. Therefore, I now think that it is high time that the realities of feasible public land policy management be recognized and that the reforms of mineral leasing policies that I have long advocated should be part of a broader program of land law reform that could turn over substantial parts of the public land to the private sector.

Senator EVANS. Thank you. Are there any other Commissioners that would like to make a statement?

STATEMENT OF HON. ANDREW F. BRIMMER, MEMBER OF THE COMMISSION ON FAIR MARKET VALUE POLICY FOR FEDERAL COAL LEASING

Mr. BRIMMER. Mr. Chairman, I do not have a separate prepared statement. During the course of the Commission's hearings and deliberations, I have talked a great deal and much of it is among these 600-odd pages and I would not want to repeat them, except for observations I would want to make and call to the attention of the Congress.

First, Mr. Chairman, I would hope that procedurally the comments and review of the Federal leasing of coal by the Secretary of the Interior would become a part of the record of these hearings. Reference has been made to this document from time to time and it may be that automatically it would be incorporated as a part of the hearing, but if not, I would ask that that be done.

The comments show that the Department of the Interior was already in the midst of reviewing and revamping the coal leasing program before the Commission's report was received. That report has stimulated further efforts to revamp and review procedures within the Department and it appears as though from my brief review of these comments by the Secretary of the Interior that the principal weaknesses identified by the Commission are already on their way to being repaired. I want to stress that, because it appears as though the environment which we have encountered in the Department with respect to managing the program has already changed a great deal and I think it would be a mistake to give the impression that the old ways which we encountered are the ways that are now in place, which is not the case.

Mr. Chairman, I believe that the moratorium which the Congress imposed on coal leasing, which was to be in place for 90 days until the Commission had submitted its report ought to be allowed to expire at the end of the 90 days. I believe it would be a mistake to extend the moratorium beyond the date already set.

The record is clear the 1970's moratorium while adopted for good reason did in fact disrupt the market and created a number of obstacles which are still in place. It would be unwise, in my judgment, to permit those to continue.

There are in our report, Mr. Chairman, several places in which we called to the Congress' attention areas and statutory provisions which the Congress may wish to examine. It would be noted that we did not ourselves make recommendations for Congress to change the law. However, from my point of view there are several places in which I believe the law ought to be changed and one of these I would mention specifically, and that is granting the authority to the Secretary to negotiate sales when there is only one bid.

In other words, the fewness of bids is one of the principal obstacles in the official operation of the market for coal leasing. Unlike the market for coal, the market for leasing is not competitive, far less so than the market for coal.

One way to cope with that, given the configuration of ownership patterns and so on, is for the Secretary to have authority properly hedged to negotiate such sales.

Finally, Mr. Chairman, while we did criticize the management of the program in general and while weaknesses were discovered at all levels, I want to note and put on the record my appreciation for the capacity and the dedication of a number of the staff people who were involved in this program and they were good people. They put in a great deal of work and while errors were made, I do not look upon the staff of the Interior as in any way unworthy. I want to stress that, Mr. Chairman.

Thank you very much.

Senator EVANS. We will ensure that there is appropriate reference to the Secretary's report in the record rather than inserting it in the record and causing it to be reprinted in its totality. We will ensure that there are suitable connections so people are very much aware of that.

Mr. BRIMMER. Thank you.

Senator EVANS. Commissioner Alexander.

STATEMENT OF HON. DONALD C. ALEXANDER, MEMBER OF THE COMMISSION ON FAIR MARKET VALUE POLICY FOR FEDERAL COAL LEASING

Mr. ALEXANDER. Mr. Chairman, I just wanted to comment on one point that my good friend Dick Gordon made, I do not think we were subjected to any particular undue criticism. It was just the normal criticism you get around this town. Compared to what criticism and abuse I got when I was in the executive branch before, this was nothing.

Senator BUMPERS. We all owe you a debt of gratitude because it was this Commission that brought about the exodus of James Watt.

Mr. ALEXANDER. Well, that was not the purpose for setting up this Commission. It was the effect, I guess.

Senator EVANS. I do not think my friend from Arkansas has been recognized, even though I might agree with him. Go ahead.

Mr. ALEXANDER. That is all I had to say at this point. I may have some words to say later. I am not quite as strong on some of these legislative changes as some of the other Commissioners are. I have got serious questions. I reclused myself, and I think quite properly, during the work of the Commission if we are going to get into and start recommending legislative changes, like letting the railroads, who already have a monopoly on transportation, compete, if you want to use that word for coal leases, then I am going to have a few words to say.

Senator EVANS. I hope during some of the questioning between those of us who are here, you might get into some of the differences. That would be very helpful.

Commissioner Walsh, do you have any comments?

STATEMENT OF HON. JULIA M. WALSH, MEMBER OF THE COMMISSION ON FAIR MARKET VALUE POLICY FOR FEDERAL COAL LEASING

Ms. WALSH. My comment would be that it was a very worthy effort and what my long-range hope is that it will place coal in a more rational position in the long-term strategic planning of this country as an energy resource, particularly as it relates to electric ignition.

I think that keeping coal placed in that big picture will make it easier for the Government to deal with the leasing in a more reasonable way, but I think it is very important what is happening to it.

As to other sources of energy in this country, coal remains an upfront important issue from the consumer's point of view and from the development of the country point of view. I hope that our report is just a block in the foundation of that kind and I look forward to coal being a very integral part of our long-range planning.

Senator EVANS. We thank the entire Commission. I am sure that Senator Bumpers will have some questions. Let me start with one that was brought up by a comment from Mr. Brimmer suggesting that now is the time to allow the moratorium to expire and proceed under the recommendations of the Commission as have been adopted for, or suggested be adopted by the Secretary. Is that the view of the other members of the Commission?

Mr. LINOWES. I might mention, Mr. Chairman, implicit in one of our recommendations which provides for predictability and stability, you cannot have predictability and stability with moratoriums, on again/off again moratoriums.

Mr. GORDON. That is what I meant by immediate resumption.

Mr. ALEXANDER. I do not know about that word immediate. I think resumption, but in a sensible, rational, reasonable way. I think none of us diverge from the view finally adopted in this report about the program itself being a good thing, and about the need for some predictability in this area, but tempering that need with some sensible and rational judgments as to whether the market can stand a leasing program of the size that was at least considered in the immediate past.

It appears from my very quick beginning at 10:30 last night reading of the very constructive report of the Department on our report that they propose to resume, but they propose to be sensible about it.

Senator EVANS. I understand from that that you would suggest that letting the moratoria expire is all right as long as some common sense is used in the restoration of the leasing programs?

Mr. ALEXANDER. That is correct.

Senator EVANS. Commissioner Walsh.

Ms. WALSH. I think in the framework of our long-term prospective not reacting to near term as much as we have in the past.

Senator EVANS. One of the recommendations that apparently the Secretary has some difficulty with is your VI–6 on the confidentiality reporting. Are there any comments from any of the Commissioners on how the concerns that the Secretary apparently has expressed might be overcome?

I am aware from my own experience in the last couple of years sitting on the Northwest Pacific Power Council that we ran into some similar kinds of difficulties in getting proprietary information from companies who were fearful that that information might be used competitively within their own industry. We got around that simply by asking the industry associations if they would be the repository of that information and then eliminate the identity of the separate companies, and then transmit the useful and required information on to us without the identity of the companies.

Is that a potential alternative under this circumstance or are there others to overcome the problem?

Mr. LINOWES. Mr. Chairman, one of the witnesses who did represent an association had in effect offered to try to bring that data together. However, to respond to the question you raised concerning the points made by the Department of the Interior on recommendation VI-6, I mentioned in my statement that I did not find it persuasive. Let me explain why. There are three reasons here.

The Department might inhibit competition. The Commission spent quite a bit of time discussing that and I think perhaps that criticism has merit in certain areas where Federal coal is not dominant. However, I respectfully suggest in Powder River, the most valuable coal mines in the world, tremendously profitable, dominanted by the Federal Government, I do not believe, it is my judgment at least, that necessarily competition is being inhibited.

However, the other two points I do not follow, which is the value of such information is limited because of the differences the Commission identified between Federal and private market transactions. It is not limited just because there is a difference. You merely recognize it and adjust for the difference.

The third point, policing the accuracy of the information would be difficult. There is no reason to police that information. You just take it at its face and deal with it accordingly. It is not unusual for the Federal Government to require information. It is very important that we do keep it confidential and protect it completely.

There was a great cry when the Securities and Exchange Commission came into being. Big business complained bitterly that it would ruin their business because the competition would know all about their internal financial affairs. Well, that did not happen; just the reverse happened. There was such confidence built into this kind of disclosure that money from all over the world came here to invest.

And I respectfully suggest, therefore, that this point that disclosing this kind of information would not be that well received, I would at least like to get some public exposure and I might add this, I addressed two groups of industry representatives, the chief executive officers in both cases, I think, and during the question period, I made that point very clear. I said I thought it was just and fair.

I did not hear any real opposition from it. We did hear some opposition from some of the witnesses who said they would not present such information, but in any event in spite of the comments made in this review, I feel that it should be given a trial. That is a personal opinion.

Senator EVANS. Would it be appropriate in your view if there were some reluctance or would it be as valuable if there were some reluctance from the company to have them go through that process of having whatever association or group or even some appropriate accounting firm be the ones to receive the information and to eliminate the identity of the companies?

Mr. GORDON. I think it would have to be an accounting firm. There is on the one hand no single trade association that fully represents the coal industry. On the other, the usual problems of antitrust would restrain what the trade association is willing to do in this area. So if you are going to do it at all, I would think it would have to be an accounting firm.

Senator EVANS. I am not sure it is a necessary or an appropriate action, but if it would elicit the information that you otherwise could not get, it might be helpful.

Mr. BRIMMER. Mr. Chairman, I did not support this recommendation. I did not dissent in the end, but during the discussions I raised objections to it and pointed out the disadvantage of requiring private transactors to compile and share with the Government information dealing with strictly private transactions.

Let us understand this would require the detailed reporting of terms, prices, and other conditions of transactions that in no way touch the Federal program. The transactions among lease holders presently are in the future where the transaction at the time may have no expectation whatsoever of ever dealing with the Government, yet, this would require and impose a burden on such firms to supply that information to the Government.

I consider it an unwarranted and unnecessary intrusion and an imposition of reporting burdens on firms at a time when presumably we, the Government are seeking to reduce such burdens. I believe the benefits that might be expected to derive from such a requirement, and I think there might be some minor benefits, would be far outweighed by the cost to industry of complying with such a program, for transactions which may be numerous but which in fact would never come close to touching the Government's program.

Consequently, I concluded that since the cost far outweighed the benefits that it ought not be done.

Mr. ALEXANDER. Some of us concluded the other way, as you might expect, Mr. Chairman.

Senator EVANS. I find that this report, although marvelously wrapped up and presented as the report of the Commission, was not arrived at without some controversy.

Mr. ALEXANDER. As a tribute to Chairman Linowes, that he could keep everybody moving in the same direction here, I just want to agree with what Chairman Linowes said about the Department's comments on this recommendation. I would surely hope they would be reconsidered and we could find out whether the benefits to the public outweigh the cost to the private sector. The agency with whichever the firm was connected collects a great deal of confidential, private information from the public. That requires the public to submit it, and I think it guards it pretty well. I have not heard that the burdens of filing a 1040 are so great as to call for the abolition of the 1040.

Senator EVANS. You might hear some differences of opinion around the country on that particular application.

Mr. LINOWES. May I just inject here, one of the major problems that the administration has is the lack of information in order to come up with an appraisal. Part of that is the result of our own actions. When you have a moratorium in effect for 10 years, which we have, there were just no sales that the Government could use to compare.

Now, if there were stability even at a very low level, then the accumulated experience might not make it necessary, but right now we do not have that and there is a crying need for energy and coal is the least expensive energy we have.

Senator EVANS. We have one other question before we turn to Senator Bumpers. Again, referring to—well, first, a question of the 10 years or approximately 10 years that some suggest are unnecessary to develop from the time of leasing to the time of production is composed of what elements? How much of that period of time is required for the leaseholder to go through the necessary regulatory and environmental hearings? What are the different factors that lead to the time requirements between leasing and production?

Mr. LINOWES. I visited the Powder River area and overflew about 12 mines, visited and went into the pits on two of them and spoke to the officers of the companies. One group of officers furnished me with a calendar that showed that it took 12 years to open that mine. Another one who is approaching the 10-year period is alarmed because it is just a subsidiary of an oil company that would have to stop bidding on oil leases as well. This is that other provision that we would suggest against. But it takes about 3 or 4 years, I understand, just to go through the paperwork and the environmental affairs, just to get some of that clear.

Sometimes it can take 2 or 3 years to work out something with surface owners to get their consent. On smaller mines, in the Green River area, the seams are narrow. You have to build a backhoe. The backhoe has to be built on location. One of the mine officials told me it took 3 years just to build that backhoe on location, because they are so big, in order to get at these twisting seams.

So there are many factors involved here, not the least of which are the restrictions that we place on it for a good cause.

Senator EVANS. One of the concerns that we ran into in developing an electric powerplant in the Northwest was just that factor of very long lead time, especially for the construction of the planning, the environmental regulations and construction of the central powerplants, whether coal or nuclear fired.

And we, of course, are in great difficulty today in the Pacific Northwest, because of plants started long before there was any understanding of the need for power at the time when plants would be completed and it is the risk of time that causes some enormous potential expense. We, in the development then of a nuclear power plan, came back with the consent at least of an options program where, in the building of a coal plant, for instance, you would buy an option from the developer at the time that all of the regulatory process was completed and construction was ready to proceed. And that was about 6 out of the 10 years, but only 6 or 7 or 8 percent of the total investment had been made and by buying the option

through Bonneville, you could then hold construction until such time as you, looking 4 years in advance, could see the need for power and you could a lot more accurately associate the plant's coming on line with the need for power.

Do you see any potential for similarities between the coal leasing program of this nature and that concept of option process? I think it concerns all of us. It certainly does me, in that the coal leases which are sold with the knowledge that the need for coal is out there 2 years in advance and we cannot predict very well what the needs are going to be that far in advance.

Is there any way to shorten that decision time or do anything along that line or do we just have to live with it?

Mr. BRIMMER. I do not think so, Mr. Chairman. Mr. Linowes described the mixture of planning and technical implementation requirements, which I think cannot be shortened very much. In the case of the Northwest with the options, perhaps that might be applicable in other ways, but as you might recall, we looked at an alternative solution.

Some of us took different positions on it and some of us reclused ourselves and so on, but in general the idea of asking a firm holding the lease to accelerate advance royalty payments in lieu of the 10-year diligent development scheme once you have reached the 10-year period struck some of us, and it certainly strikes me, as a way to discourage the holding of idle leases for speculation or for—in other words, simply holding the resources idle rather than developing them.

And also there is a rigid limitation of 10 years before development strikes me as counterproductive and I would suggest again that some balancing off of the development requirement could be achieved by advance royalty payments in some way, and I think that would be a better way of doing it.

Senator EVANS. It would not make any sense at all, especially on the larger and more potentially productive tracts, for the department itself to go through the process of seeking the necessary regulatory environmental requirements and not offer the bids for lease until you were actually ready for production. You could say, here is the lease and this lease carries with it the necessary environmental requirements and now when you need it, you are looking at a lot shorter potential time period for production and perhaps you will not only get back your investment in that, but a lot more besides.

Mr. GORDON. The trouble with that is that it gets us into precisely what the Commission was trying to avoid of putting a great deal of responsibility on Interior for what it is not qualified to do of selecting the best tracts. I think the one thing we did like about the way the coal policy was moving was trying to rely more on market signals about what should be leased and developed, and your suggestion, unfortunately, runs contrary to that and would make it problematic.

I mean, if you really want to speed things up, I am afraid you are going to have to go back and do, first, as complicated a set of regulations imposed on the development of our energy projects in this country, which is back to my point, do we really want the set of laws we have saddled ourselves with in the last 10 years or so?

Senator EVANS. Assuming we cannot, are we getting a good market signal, however, when the market is so far out in the future? Nobody, it seems to me, whether in or outside the Government, can very readily or easily detect the real market when they are 10 years out in front of us. So while I appreciate and, I think, support your fundamental beliefs in the market and how the market works, it cannot really work very accurately when you have got such a long——

Mr. GORDON. Compared to what?

Senator EVANS. Compared to the kind of preparation I was just suggesting that would put things out for lease at a time when they are a lot closer to the market need.

Mr. GORDON. Again, sir, I have grave reservations about whether that would work better than the imperfect efforts of a large number of people whose very survival depends on a reasonably accurate assessment of the prospect.

Mr. BRIMMER. Mr. Chairman, I think we ought to keep uppermost in our minds the realization that investment in a coal lease necessarily involves making judgments about an uncertain and risky future. There is no procedure, no set of rules which will diminish that risk or diminish that uncertainty. It becomes a question of who will bear it and who will run the risk of reaping the rewards as well as the losses.

I believe that it would be better to permit the private holders to take those risks rather than the Government bureaucracy trying to pick the winners and pick the losers. Let the risks run in the market place, make certain that the terms and conditions that are taken are reasonable and let those who want to provide the capital and so on hold those. I do not see any other way to do it. The obstacles ought to be removed as I suggested.

Senator EVANS. The question is whether the taxpayer is a rate payer and they generally end up being the same people.

Mr. LINOWES. Mr. Chairman, since you raised that subject, I just want for the record to make clear, I spent over 25 years in the private sector intimately involved in big business. I have also been intimately involved with Government and there is no question in my mind the public and the Nation would be better served by applying the marketplace to this type of development.

It is very risky. It takes very astute powers and you just cannot always attract that kind of entreprenneur to work for the Government. It is just a different type of bureaucracy that you are working with. So I strongly urge that we not move in that direction but find the means of monitoring in an effective way without unnecessary regulation and legislation and where necessary tax, if taxes are excessive. That is another device rather than for us to get into the operation.

Senator EVANS. Senator Bumpers.

Senator BUMPERS. Commissioner Walsh, let me first thank you for your diligent your work and for providing us with this report. We are going to be hearing from the Interior Department very shortly on their thoughts about this report, and I look forward to questioning the Secretary and officials of the BLM about it.

I have so many questions I hardly know where to begin. Let me just ask you this. You know we lease about 60 percent of our oil

and gas lands by lottery. Would you consider that as a possible method of leasing coal lands? I take it from the look on your face that you would not.

Mr. LINOWES. You are talking about—they do lease some lands by lottery, as you know.

Senator BUMPERS. Coal lands?

Mr. LINOWES. Maybe not coal, I do not know. I know oil, yes.

Senator BUMPERS. As a matter of fact, that is now specifically prohibited for coal. They used to lease coal lands noncompetitively, because coal did not have a big enough lobby to protect it.

Mr. LINOWES. In any event, you are talking about gambling versus business decisions.

Senator BUMPERS. Thank you very much for that comment. I could not agree with you more. Do you mind if I use that? That is a great line.

But you know we are all plagued with a very taunting question here on what is fair market value for coal leases. The law requires BLM to get fair market value for these leases. In your report, you have not been able to come up with a definitive definition of fair market value and I am not critical on that point because I recognize it is a very difficult thing.

Should we consider repealing that part of the law that requires fair market value for coal leases?

Mr. LINOWES. I appreciate your bringing this up, because this has been a very sensitive issue as far as I was concerned because of the way some of the misinterpretations have gone afoot on this. We clearly do face the fair market value issue. We deal with it very forthright, legally and economically.

The point is there are two approaches to fair market value. One is largely the economic approach, which says that the term fair modifies market and as long as you are fair in putting a product on the market you are getting fair market value. The other is more legalistic and Mr. Alexander can speak to that, but as a thumbnail definition, fair modifies value. Therefore, first you establish what a fair value is. If market conditions are such that you cannot get this fair value, then do not sell it.

So you really have two interpretations. You add to that the fact that the appraisal profession itself has such a confused definition, you can make it mean anything you want. We stress all of that right in this report. Therefore, in our recommendation, we refer to fair return, so, therefore, implicit in that, as I personally would like to see, removing the term fair market value from the legislation.

I am sure Dr. Brimmer and Mr. Alexander and Ms. Walsh, Dr. Gordon, all would have something to say about this, because we spent a lot of time debating it and I feel that effort and what is in the report should be recognized by critics.

Senator BUMPERS. You state in the report that the Government should not seek to raise the price above the competitive market level, and that the quantity of coal leased should be determined so the Government will receive a fair return.

My question is what is the difference between fair market and fair return?

Mr. LINOWES. Because of the fact that traditionally it has taken on these two definitions, there is the problem. Just like any other term we have legally or in economics, it has taken on these definitions so much so that the profession itself in its yellow-jacketed booklet defines fair market value and it is confusing. Then the courts through precedent have established fair market value to mean stressing the fair value, as I understand that aspect. I am now speaking from a lawyer's point of view and I should turn to Mr. Alexander for this.

Mr. ALEXANDER. I think the whole dumb thing is a tempest in a teapot. It got blown all out of proportion when we were putting our report together and I think in a rather silly way. On page 612 of our report, we give the normal definition of the fair market value as the amount in cash in which in all probability probably to be sold by an eligible owner, willing and not obligated to sell to a knowledgable purchaser who desires but was not obligated to buy.

That term fair market value is a statutory term in the Internal Revenue Code. It is a term which has been derived by court decisions interpreting what is just compensation in the Constitution. It has been around a long time. I would hate to see it abandoned for some new term, even fuzzier such as fair return. And in answer to your question, is fair return different from fair market value? I am not at all sure that it is.

There is some sort of implication in the Department of the Interior's report that it is something less than fair market value and I am not at all certain that that is the case. I am not at all certain that it is borne out by page 129 of our report, where we bring in this "fair return" in here. I think the reason it got in here was that we had to go on to something else and we had reached 5:30 that afternoon when we had got to this point.

Now, if you pull fair market value out, we have got to have a new term and unless that term is defined very, very carefully, indeed, unless it means something materially different from fair market value, why not use a term that has been around a long time that has a definition in the uniform appraisal standards which are all parties to this rather silly divergence of view agreed upon.

The only way that our divergent views get into the realm of practicality is in this area. Do you take into account the thinness of the market in deciding how much to lease? In my view, you do not necessarily obtain fair market value. If as I have put it one time before the Commission, if you try to sell 200 Mercedes in the Washington area in 1 week, the people are going to have a wonderful time buying Mercedes and maybe even qualify for continued tax deductions under the House bill, limiting the cost to $21,000, but whoever sold them is a nut.

I think the same thing would apply if you try to lease far more coal into this market, given the problems that the chairman mentioned about lead times and about the uncertainty of the future, if you try to sell too much too fast, I do not think you will get fair market value.

Now, some economists and some others disagree, because they say if you have got a third party purchaser, you have got a willing seller however stupid, you have got a third party purchaser howev-

er smart, whatever they agree on is fair market value. And I do not think it is. And I do not think, having had some responsibility in trying to administer a statute that has fair market value in it in an agency charged with making thousands and thousands of determinations of fair market value, if the agency was dumb enough to accept that kind of view as fair market value, our tax revenues would have been a lot less than what they actually were.

Senator BUMPERS. Mr. Alexander, I appreciate what you are saying and I could not agree with you more. Fair market value, it occurs to me, ought to mean the same to the Government as it means for me.

Let me ask any of you, do you think that fair market value should have any different definition for the Government than it does for an individual?

Ms. WALSH. Here you have the unusual circumstance with the Government being on one side of the market and being such a dominant factor that you do not have a true auction in the practical sense, so that the fair market value changes context when you have that much control on one side of the market.

Senator BUMPERS. I have introduced a bill that I hope will pass sometime this year, which would get rid of the lottery system for leasing oil and gas lands. The system seems so outrageous that I cannot believe that it is still going on. But be that as it may, my bill would provide, for example, that the tracts would be nominated for leasing by people who are interested.

I cannot imagine getting fair market value for a lease when only one person is interested in it, can you? Mr. Brimmer, do you want to answer that?

Mr. BRIMMER. Senator, yes, I can imagine that you could get fair market value, because you have only one item being supplied to the market, so you do not, in fact, have a market with the characteristics that would produce many bidders and so you have nothing approximating the kind of auction that has just been described.

Essentially, you must interpret the meaning of fair market value in the context of the nature of the market where the transaction is occurring. The Federal Government gets fair market value once every week when it auctions Treasury bills and I doubt if anyone would dispute that. There are numerous buyers, one seller, but a very strong set of bidders.

The market for longer term Government bonds is equally competitive, although you have fewer bidders. But when you move over to the markets in which transactions occur and in which the nature of the supply is such that you have only one offering, then you clearly are in doubt with an indeterminant situation unless you can make judgments and that is what we are left with.

Alternatively, if you were offered, if you were the Government selling off one unit, an old master painting, one unit, how can you tell what it is worth? It is worth what someone is willing to pay for it. If there is a sudden run of taste in favor of that, you may end up with a very high price, but all you have done is run up the multiplier, the price times the quantity of the same thing. So you collect more revenue.

If the alternative happens and there is a sudden running away, a change in taste, you end up now with few or no bidders. If you ne-

cessitate a seller, you are forced to sell, the probability is very high that you will end up with a value, a market value less than the previous case. So it is a question of what is fair. And I am saying in that circumstance, you would have to moderate the judgment to make it rest substantially on the pace at which you are offering the commodity. Unless you were willing to modify that pace I would suggest you will not get fair market value.

The specific question, should the notion of fair market value be dropped from the statute, I would say no. I share Commissioner Alexander's view. It is known, it is there, it is fuzzy, but at least we are dealing with a familiar fuzziness and I think that is better than dealing with an unfamiliar fuzziness—because there will always be fuzziness.

Mr. GORDON. I, too, share the general fair market value intelligently used as what we should stick with. In your specific instance of doing away with the lottery on oil and gas, I think that is a very good idea. It is a silly system that we should have long gotten rid of.

However, the nature of that process is so much different from coal leasing that I think we are going too far in demanding multiple nominations. With this frequent offering of many leases, I would find it quite likely that if persistently these things go in adequate prices initially, there will be speculators moving in who will bid up the price and you can be reasonably sure in the long run of getting fair market value on these oil and gas leases. I think overly stringent requirements may not be necessary because there is so much competition out there.

Senator BUMPERS. Why should we lease a tract at all if only one person is interested in it? I am not talking about 5,000 leases on a tract. I am just talking about some guy who comes in to the BLM and says I would like to have those 3,000 acres out here in the middle of nowhere. Why should the Government lease it if he is the only one interested?

Mr. BRIMMER. Why not? I put it in the reverse. If the Government is in the leasing business, and that is what it says, now it could very well conclude as a matter——

Senator BUMPERS. I hope your report does not say that the Government is just in the leasing business.

Mr. BRIMMER. No; I am saying that the Government has indicated that it wants to be in the leasing business, that it wants to lease mineral rights to Federal lands rather than holding them itself. Given that posture—and let me repeat—it may be a policy you want to repeal. I do not recommend that. I believe the Government ought to be holding out on leases for mining, but once you have decided that you will offer leases, then you presumably ought to be willing to lease those rights if a potential miner will meet the terms, and ask for it in specified terms.

If only one exhibits an interest in that, then why penalize or deny the right to mine to that one person who has exhibited an interest purely on the grounds that it is too bad that there was not a sufficient interest of two or more and therefore you will keep it. I think that would be an unwise posture.

Senator BUMPERS. You state on page 535 that leasing large amounts of coal may in and of itself cause the Secretary to fail to

meet the statutory requirement to obtain fair market value. Does not fair market return depend on how much coal is put up for lease?

Mr. BRIMMER. Precisely, and that is why we said, Senator, and stressed throughout this report especially in this section that the Secretary needs to be guided by the amount and timing with respect to the leasing program, the amount offered and the time offered.

We also suggested that the Secretary not be blind to the conditions prevailing in the market for leases independently of what his original leasing schedule might have called for. Translated, we have said, you may have projected an offering of a supply of leases against a schedule extended over 2 or 3 years and in the meantime the market has fallen away from it. We are saying to the Secretary do not be blind and rigid, do not pretend that the market has weakened out from under you, modify your plans. That is what we have said.

Senator BUMPERS. I am really sad that Senator Jackson cannot be here this morning; he was my partner throughout all of these battles on coal leasing. We always felt that leasing was being overdone, and that there was no way to justify a 10-billion-ton coal lease offering over a 2-year period, pretending we would get fair market value for it, when we have 18 billion tons under lease right now. I do not know how much of that can be economically mined. But the 1982 production levels from Federal leases were roughly 104 million tons, I think. I calculated 1 day that we had at that rate about a 180-year supply of coal under lease right now. My point was why should we lease more?

And you come to the conclusion, correctly I think, that when the demand is not there the more you lease the less you are going to get for it. So you cannot square the requirement for obtaining fair market value with this inordinately high leasing policy of letting everything go at one time.

Mr. LINOWES. Mr. Bumpers, you have to recognize this, however, We do have locked in a 12.5 percent royalty rate. As I mentioned earlier, that is considered relatively high in industry.

Senator BUMPERS. 12.5 percent?

Mr. LINOWES. 12.5 percent.

Senator BUMPERS. Is that higher than it is in the private market?

Mr. LINOWES. Yes, based on testimony we have had, it is higher and it is higher than the States get.

Senator BUMPERS. What does the State of Wyoming get on its coal?

Mr. LINOWES. We had the Governor and——

Senator BUMPERS. I would like to know this.

[Pause.]

Mr. GORDON. Thirty percent in Montana.

Senator BUMPERS. You are talking about severance tax.

Mr. GORDON. Yes.

Mr. LINOWES. And we are talking about royalties.

Senator BUMPERS. Right.

Mr. LINOWES. In any event, we did get testimony, let me recall, there were two spokespersons from various States, one representing three or four States. Of course, we had the three Governors.

We had written testimony from them. We had the private sector and I do not recall one instance where any of these people who are involved felt that the 12.5 percent was not high.

As a matter of fact, the scale, if I recall it, was something like this, and this was from the spokespersons from the State, they said the lowest royalty rate is in the private sector. The next is the State. The highest is the Federal Government. And this is the reason, and this comes from an investment banker, a very distinguished firm from Wall Street who testified. He said it is a mistake for the Government to feel that you can equate coal with oil and gas.

The cost of producing coal is about 75 percent of the sales price. The cost of producing oil is about 20 percent. When you begin trying to apply the same royalty rates to both, you are causing great confusion and great problems.

What happened after the law was passed bringing---

Senator BUMPERS. Incidentally, I take strong exception to that. If you are talking only about the production of oil that is one thing, but if you are talking about exploration and production, I think 20 percent is a very low figure.

Mr. LINOWES. I am just quoting. I recall that figure and I think perhaps the other Commissioners can support it. It is all in the record. But he had no ax to grind in any of this. He was just helping us in his testimony. Because as a matter of fact, as he pointed out, as we are discussing here, it takes anywhere from 3, 4, 5, 10 to 12 years to open a mine. You can open a well in a year and start producing. Anyway, that is just digressing a bit.

The point here is that locked in by law is 12.5 percent. When we talk about selling a lease, we are talking about the bonus bid. We heard some testimony that said the relationship of the bonus bid to the total revenue stream could be as small as 7 percent. In Powder River, one of the appraisers we had in as an expert witness said, it is—the bonus bid was about 30 percent based on present value of money over a 40-year life of a lease.

Therefore, when you have that 12.5 percent, people know if they are going to want to get revenues from it, they are going to have to pay 12.5 percent. That in itself is an important constraining element and we discussed recommending lowering it, and we did not. We felt, let's stick with it; let's have stability there.

And incidentally, in the private sector, I understand it is not uncommon not to charge any bonus bid. All the bonus bid is is a privilege to mine. They take care of it by fluctuating the royalty rate. So we are dealing with a very complex type of operation here, not something clear cut.

Senator BUMPERS. When the debate on the coal leasing moratorium came up in the Senate, we reviewed a study done for OTA. In the Powder River sale, which you all roundly and justifiably criticized, we discovered that some of those leases which went for a fraction of a penny per ton were sold in the same area where the private lands brought as much as 18 cents a ton.

Now, maybe there was a royalty concession made in those cases, but if there were the OTA study did not point that out.

Mr. LINOWES. There are other elements in the Powder River sale that are still being investigated.

Senator BUMPERS. I understand that and I am not trying to get into that part of it. All I am saying is that even if the sale had brought the additional $100 million that some of us felt that it should have brought, the bids still would have been very low, compared to what lands were going for in the private sector.

Mr. LINOWES. Our primary emphasis, of course, was on procedures on how to get fair market value, what our mandate was. In retrospect, we were very uncomfortable with——

Senator BUMPERS. Mr. Chairman, let me turn to another part of the report.

Mr. GORDON. Sir, could I have a chance?

Senator BUMPERS. Go right ahead.

Mr. GORDON. The discussion on the relationship to leasing levels at fair market value, I think, needs a little amplification. As I said in my prepared statement, the relationship has been exaggerated. It is much more complicated than has been indicated by many of the discussions. In an idealized world, there would, in fact, be no relationship whatsoever. That idealized world would be one with vigorous competition for Federal leasing, reliance entirely on bonus bidding and an absence of diligence requirement.

In that case the market would limit when the lease would be used and the market would determine the fair market value and under my assumption you would get fair market value. It is the violation of these assumptions that causes the problem, first, the absence of competition for the leases and in many ways primarily that. A problem, which by the way, is only indirectly related to leasing levels. The relationship is a round about one. The more you lease the less able you are to do things to stimulate competition.

Then the second problem is the diligence requirements. There has to be a certain amount of discount on what people will pay for a lease, because of the danger of losing it to a diligence requirement.

Senator BUMPERS. There is not much danger. The Department of the Interior has never canceled a lease for lack of diligence since Adam.

Mr. GORDON. We now have a law that says they have to cancel the lease for lack of diligence and we are leasing under that law, sir, and I think that is the particular problem we had to wrestle with in defining an appropriate value standard of how do we set up our leasing goals that do not necessitate an excessive, whatever that may mean, sacrifice of revenue to the Government because of the cost of the diligence requirement.

I think that to me is the big nettle about fair market value. So summing that up, because coal leases are just very different from a Mercedes, they are the derived value from what the coal can demand in the marketplace, something that does not change over time. The relationship between fair market value and leasing level is exceedingly complicated and has to be approached with considerable care, which we tried to do in the Commission report.

Senator EVANS. Would you say there are similarities between this question of due diligence requirements and the current mess that we are now in with the timber sales where there is a requirement to remove the timber within a certain number of years and the market has fallen apart and many of the timber companies

who bid those sales have the unhappy choice of cutting and going bankrupt or not cutting and going bankrupt?

Mr. BRIMMER. The timber situation, Senator, is an even more dramatic, present day case of potential with respect to due diligence in coal, quite parallel.

Mr. LINOWES. This observation, however, timber is a renewable resource. Once they cut it, they can plant new timber. Oil is not renewable, nor is coal necessarily renewable. So we have to put that into the equation as well.

Senator EVANS. On that point, today's company is not likely to be around by the time the next crop comes along.

Senator BUMPERS. On that point, have you recommended that we do away with the diligence clause?

Mr. LINOWES. Well, what we did was suggest that, the diligence clause today requires, as you know, a mining and commercial quantities within 10 years or you terminate the lease. We say, because it takes so long to develop a mine, you should allow a 10-year extension with advance royalties on an escalating basis.

The concept, as was brought out, and the rationale is that those royalties, those advance royalties be such as to be somewhat painful to the lessee who does not seriously contemplate developing the mine.

Senator BUMPERS. Just a second, Mr. Chairman.

Ms. WALSH. Well, I think this relates very much to Mr. Evans' point, you cannot look down the road. If you bid on that lease and in 10 years, what if that market is flat as a pancake? So that is an added penalty and that discourages competition and people who do not want to make that kind of a commitment would hesitate to bid. Given that bigger window, we think it would be a healthy thing for encouraging competition.

Senator BUMPERS. Ms. Walsh, if we relaxed the diligence requirements—and I am not saying your recommendation is not one that I would support—would we not also by doing that encourage the coal companies to do exactly what the timber companies did? They were bidding $300 or $400 per thousand board feet, betting that the price was going to continue to escalate as it had in the past. I am not being critical of them. Every businessman makes his money and makes his choices. But if you relax the diligence requirements are you not inviting people to add to their reserves rather than produce, and do you not also diminish the chance of getting fair market return?

Ms. WALSH. I do not think so, because I am a very, very big believer that the market accommodates that. People will maybe take more than they need, but if that market does not develop and they have no place to go, then they will withdraw from that market and I really think the market should be allowed to work out here, and will control supply and demand if it is not forced. However, I think the more competitive and fair we make the market the more that will come in line in a technical auction market.

Mr. GORDON. We are not relaxing the diligence requirements so much as changing it. We are replacing administrative diligence requirements by financial ones and as you are probably aware in dealing with economic issues, that is a standard economist ap-

proach to use price rather than quantity as a controlling mechanism.

Senator BUMPERS. You are suggesting that at the end of the 10-year term the leases start paying advance royalties. Is that right?

Mr. GORDON. That is exactly right.

Senator BUMPERS. What if they do not? Do they surrender the lease?

Mr. BRIMMER. Yes, terminate it.

Senator BUMPERS. On page 112 of your report you state by withholding needed coal from the market, underleasing of coal can cause prices to consumers to rise. Now, it seems to me that the key words there are "withholding needed coal." Needed is the key word. As an economic theory, I do not quarrel with that. Obviously, if the country needs coal and is demanding coal, and Interior is not leasing it, the price is going to rise.

Do we have any history of that happening since the oil embargo?

Mr. LINOWES. There was a moratorium. Senator, may I suggest this, there is no question that we need energy. We import, what, 40 percent of our oil and as long as this Nation needs energy, coal is your cheapest energy resource.

Senator BUMPERS. But there is no demand for it right now.

Mr. LINOWES. Well, there is no demand because of the constraints, in my judgment.

Senator BUMPERS. Mr. Linowes, are you saying we are not mining coal because of constraints in the Federal leasing program?

Mr. LINOWES. Because of transportation more than anything else. I personally would like to see slurry pipelines, but I do not want to get into another issue. May I inject this into this diligence question? I can argue just the reverse. By doing what we are recommending, you are really imposing a greater burden on industry for this reason. Let's assume that everything stays as it is now, 10 years are up, we say to the company you are out, give us back our lease, and then we turn around and immediately sell it. We sell it again for some nominal figure as a bonus bid, that is all it is, it is not 12.5 percent, and then the next guy comes in and gets a free ride for 10 years.

We are saying do not give anybody those free rides. Give them 10 years and then you start paying and paying significantly.

Mr. BRIMMER. Senator, may I comment further on the question you just raised. On page 112 of this report, we are describing the market for coal leasing, not the market for coal. This discussion assesses the implications of——

Senator BUMPERS. That is not what it says, Mr. Brimmer. It says that by withholding needed coal from the market——

Mr. BRIMMER. I repeat it is a discussion of the market for coal leasing and that, Senator, is talking about leasing. At the bottom of the page, you will notice every modifier there is with respect to leasing. We are not talking about the volume of coal. As we have said in this report and have stressed here this morning, the market for coal, the physical commodity already above ground or ready to be mined immediately is a very competitive market.

There is no question that that market operates in a way to determine fair market value. The problem arises with respect to the

market for leasing, the market governing the prices and quantities for the rights to mine. And that is what this is about.

Mr. GORDON. Excuse me. I think the critical word is needed. Now, if you define needed as physically needed, you are obviously right——

Senator BUMPERS. We are talking about demand, and whether the demand exceeds the capacity or supply. Is that not what we are talking about here?

Mr. GORDON. No, but let me continue, if I may, sir. If we are talking about physical availability, if that is what you mean by need, quite clearly no need exists. But in economics we look more, at more than the quantity. We look at the quality of it and there is an open question about whether the best of all possible coal resources have already been leased. And the need we are talking about is not a physical need; it is an economic need, the need for putting better reserves in the hands of industry and holding down the cost of collection and the price.

It is quite consistent with having ample physical availability to have an inadequate economic availability by failing to lease the best properties and that is what we are talking about.

Mr. BRIMMER. Senator, I would just complete what I was saying. We ought to visualize on pages 112 and 113 that what we are describing is the activity in which a mining company that already holds an inventory of minable properties is making the decision as to the rate at which it will add to that inventory of minable properties.

And if they consider the availability of leases in the future is likely to be less than demanded in the future, then that would be the basis for a strong demand for leases, leases to add to inventory. The reverse would also be true.

Now, I personally do not necessarily agree with the passage that says that the danger of underleasing, as supplied here, can cause coal prices to consumers to be rising——

Senator BUMPERS. You do not agree with that, Mr. Brimmer?

Mr. BRIMMER. I said not necessarily. I would want to examine each prospective case on its merits. The logic is clear, the logic embedded here is correct. Today, I personally believe that the rate at which the Interior Department was offering leases to add to inventory was too big. I said that. But having done so, I do not necessarily go on to say that there are never circumstances under which the supply that they are offering would be too small.

Again, I want to be fuzzy and hedge about it and to deal with it on its merits as the case comes up.

Senator BUMPERS. I have just a couple more questions and then I will discontinue this. I know you want to get to a meeting.

Senator EVANS. I am prepared to stay.

Senator BUMPERS. I want to submit some additional questions to the panel in writing. But first I want to get into a couple of other questions that really concern me.

No. 1, I can understand why certain coal companies want, need, and are entitled to maintenance leases and bypass leases. I have no quarrel with that. But when you add to that the number of preference right lease applications on file right now, I must say I cannot understand why we need to lease still another 3 to 4 billion tons of

coal, given the fact, as I said a moment ago, that we are producing only about 100 million tons a year. You are suggesting that we add to the 18 billion tons under lease right now by 3 or 4 billion tons. If you agree with your own statement that the more you lease the less likely you are to get fair market value, it seems to me that is a real contradiction.

Mr. LINOWES. May I make an observation here? The PRLA's, the preference right lease applications, we suggested be considered part of any consideration for lease planning.

May I make another observation? Our recommendations do not place any numbers as to what we think is appropriate, nor should they. What our recommendations do is discuss guidelines that they will live for years in the dicta, if you will, the rationale leading up to those recommendations, and this is because we were pushed after the exposure of our recommendations, that we were told, as you have indicated, the administration is going forward with 6, 7, 8, 10 billion tons. As a result of that reaction that came in, we got considerable reaction from all of our recommendations.

We began discussing what is realistic. We began trying to put a figure on it. That is the rationale. It is not our recommendation that could serve as guidance to the Secretary of the Interior.

Senator BUMPERS. I appreciate that clarification.

Mr. LINOWES. What I am trying to say is you can approve all of our recommendations, pass the law we are pleading with you to pass and we are not putting any numbers on what to lease. I feel that action by Congress is important.

Mr. ALEXANDER. We had a divergence on this particular point that Chairman Linowes is discussing. There were some of us that thought preference right leasing ought to come off the top and we ought to see what else was necessary in the immediate future. I am delighted to see Interior proposes to adopt that recommendation. There were others that turned out to be the majority. We had a meeting while I was in San Francisco. I cannot argue with my distinguished colleagues face to face that wanted to fuzz this, but in a familiar way, a familiar fuzziness. I like that term, Dr. Brimmer. And they wanted to go ahead in a way that I thought might be a little high. I heard that we had 60 years and not 180. I thought we only had 60 years already unleased, whether it was the perfect lease or not the perfect lease, I do not know, because we do not live in a perfect world.

And I have been somewhat doubtful about the economic theory because I do not think it ever works. We ended up with, I think, all four of those in residence in Washington taking the position that we ought to put in a fairly big number. The number was even higher before some of us argued for reducing it on what ought to be done in the next couple of years. And speaking as just one commissioner, I thought the number we ended up with was a little high, but I went along with the majority because I was beaten down by the force of numbers.

Senator BUMPERS. I appreciate your comments on that.

Mr. LINOWES. May I make another, because you have stressed it, Mr. Bumpers. It is not clear, I think I can say to us advisedly, I know to me, I think generally what is under lease. We know there is a lot of tonnage under lease, but we have Interior saying 95 per-

cent is not developable because of surface rights ownership, 95 percent because of surface and environmental problems. Let me finish. The OTA says—I believe that is the figure.

Senator BUMPERS. We better clarify this 95-percent figure before we go any further.

Mr. LINOWES. The OTA figure says that 95 percent is minable. That is a difference, but let me finish. The Interior says it is not minable, so in effect we are talking about the same thing. They both seem to agree about that 5 percent that it is not minable, because the consent requirements have surfaced, the right to ownership, and the environmental problems.

Now, we heard testimony from environmentalists who said, no, that is not true; it is not 95 percent that is minable; it is 70 percent that is minable. So until we can get the facts, because on one side you are saying none of it is minable and on the other side you are saying it is either 70 percent or 95 percent, until you can get the facts, you do not know what is out there under lease.

Senator BUMPERS. Well, I thought OTA told us that at least 80 percent was minable. Lets not belabor the point, it does not really matter. We are talking about whether we have a 60- or maybe a 100-year supply under lease. For the purpose of this argument, it does not make any difference either way.

Mr. LINOWES. Except there may be no supply if the Interior is right. I mean we have to respect them as well as anybody else. That is what I am saying.

Senator EVANS. You will have an opportunity, Senator Bumpers, to talk to Interior next week and we can get at that in more depth. It seems to me that there is something else that is even more important than just the numbers we have been talking about and tossing around. How many years' worth of leases have we already got? If we are talking about new leases, is not the key question insofar as the governmental return on those leases offered the quality of that lease?

It seems to me a coal company with a whole lot of inventory may bid vigorously for a new lease if that new lease is a lot better or a higher quality or more reachable or for whatever reasons, would be placed high on that coal company's inventory. Is that not really what is at stake here?

Mr. GORDON. That is right, Senator. The reason the number and the language were adopted in the way they were was to make room for that aspect of leasing, making attractive new properties available and particularly for newcomer companies. I think more important than the number is the idea of trying to accommodate all of the things that the leasing program ought to accommodate, resolving the preference right thing and taking care of bypass and maintenance leasing and introducing new competition where appropriate.

There is no neat way to get the right number for that, so that none of us would stake our lives on that number, but we would very strongly advocate there would be some flexibility with the attainment of all of these objectives.

Senator BUMPERS. Mr. Chairman, let me just make one last observation, for comment upon by any of you. It seems to me that if we do not have the ability to make the determination, we ought to

develop the ability to determine how much of this coal is economically and environmentally mineable.

No. 2, it seems to me that the only way we are ever going to be secure in the knowledge that we are getting fair market value and also meeting the energy needs of the country is to somehow agree on what the margin ought be between the volume of coal under lease and the rate of production.

We should know the amount of coal we have under lease that we can mine environmentally, and that the demand for coal is x number of tons a year or at least history shows us the production is a certain number of tons a year, and how much coal we have out there that is capable of being mined. Those statistics ought not be obscure, No. 1.

Also, we ought to be able to use that information in determining what kind of a margin of comfort we want before we start leasing additional lands. I do not want to withhold Federal coal for the purpose of driving up prices. God knows people in my State cannot pay their electric bills now. I do not want to drive up the price of coal.

But it seems to me some kind of a system could be developed here to make everybody feel secure that we are getting fair market value, that the consumer is not being hurt, and that the coal companies are bidding in a competitive way for leases. Everybody's interest would be best served that way.

Mr. BRIMMER. Senator Bumpers, I appreciate the intensity of your desire for a reasonable system that would allow the Government to forecast and to estimate demand and to orchestrate the supply offered in response to that demand. I have no hopes or expectations whatsoever that you will ever be able to develop such a system.

Consequently, I think it would be counterproductive to impose on the Interior Department or the Energy Department or anyone else the responsibility to try to develop such a system.

Unfortunately, some time ago that approach did guide the Government's judgment with respect to the leasing. There were models run and forecasts made in the late 1970's, which in no time at all turned out to be far from the mark. Why? Is it because the people who developed those models and those forecasts and the Energy Department and so on were stupid and incompetent or is it because there were serious limitations? And there are serious limitations on the ability of even the best of the analysts to do what you have just described as desired.

Moreover, even if they succeed, which I doubt they would, in developing such a model and agree on an existing prospective schedule of demand, remember what we are talking about, we are talking about a schedule of demand over time, and then you would gear the supply of leasing to meet that schedule. That is predicated on the assumption that there is stability in demand. What if there is a sudden change, for whatever reason, and the quantity demanded doubles?

Then the supply you so carefully put in place is now inadequate. There is a shortfall to meet that. It is cut in half perhaps. You turn it around and there is now a collapse in demand and the supply you have offered out there then becomes inadequate.

So I believe we are simply frozen in these time locks and there is nothing we can do about it. On the other hand, I think it is possible and appropriate to apply reason and judgment with respect to short-term outlays. If you look at our report on pages 132 and 133 where we talk about the level of future leasing, we try to cope with that, get some feel for what appears to be the demand and orchestrate its mounting supply accordingly.

We did by the way take a count of the preference leases that might be met and so on that was there, but I do not think we will ever come to a case where we can predict with the kind of precision you would like to see in place.

Senator BUMPERS. I would appreciate any other comments if anybody wants to comment on it.

Mr. GORDON. And on the other side of it, just billions would have to be spent to adequately characterize our coal resources and do you want to invest that kind of taxpayers' money?

Senator BUMPERS. Billions to do what?

Mr. GORDON. To delineate the coal resources. You are also presuming that we can identify what are the best things to lease. And I think you would find that to be an exceedingly expensive proposition.

Senator BUMPERS. I was really talking more about identifying the leases that are already in existence and determining which ones are economically and environmentally acceptable for mining. That does not sound to me like a very expensive undertaking.

Mr. GORDON. Well, apparently it is.

Senator BUMPERS. If you want coal you go out and drill for it, and if you have 25 acres and the seams are 3 feet thick, you can calculate that there are so many tons in place. Why is that so complicated?

Mr. BRIMMER. Senator, may I add a footnote onto that, because in our report we did encourage the Department to spend more money on drilling and other means to delineate the potential of land they think they will be leasing in the future. They had stopped doing that and we think that would be desirable and that would not be so expensive. That is as far as we went on this.

Senator BUMPERS. I must run. I thank you again for your concern.

Senator EVANS. Let me just continue. I am attracted to Dr. Brimmer's recent commentary after watching what has happened in the Pacific Northwest. Twelve years ago, the best of the predictors in public and private utilities were talking about a 7-percent growth rate in electricity and successively for 12 straight years they have reduced their predictions and never caught up with the actuality of the rapidly falling demand and now they are down to one and a half percent, but it may well turn around. Who can predict what is going to happen?

I appreciate very much the length of time you have taken. I think this has been a very interesting and stimulating exchange. After hearing the commentary between the Commissioners, I wish that I could have been watching or part of the production of this report. I suspect it was just as stimulating and interesting to you as this day has been for us.

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We appreciate very much your coming. We intend to have our next hearing with the Department of the Interior and will hear from their prospective their response to this and they will be the subject of equally intense questioning.

Thank you very much.

[Whereupon, at 12:20 p.m., the hearing was adjourned, subject to the call of the Chair.]

FEDERAL COAL LEASING—COMMISSION ON FAIR MARKET VALUE POLICY

THURSDAY, APRIL 5, 1984

U.S. SENATE,
COMMITTEE ON ENERGY AND NATURAL RESOURCES,
Washington, DC.

The committee met, pursuant to notice, at 11 a.m., in room SD-366, Dirksen Office Building, Hon. James A. McClure, chairman, presiding.

Present: Senators McClure, Warner, Hecht, Evans, Ford, and Melcher.

Also present: Gary Ellsworth, deputy chief counsel for natural resources; and Linda Mason, professional staff member for the minority.

OPENING STATEMENT OF HON. JAMES A. McCLURE, A U.S. SENATOR FROM THE STATE OF IDAHO

The CHAIRMAN. Good morning.

Today the Committee on Energy and Natural Resources is conducting a second oversight hearing on the report of the Commission on Fair Market Value Policy for Federal Coal Leasing.

The report, which was released in February of this year, contains 30 administrative and 6 legislative recommendations.

On March 19, 1984, Secretary Clark transmitted to Congress the Department of the Interior's review of Federal coal leasing which commented upon the Commission report, and proposed a plan for implementation of 29 of the 30 recommendations of the Commission. The Department is also pledged to work with Congress to address the legislative items as appropriate.

In addition to these programmatic issues, the Secretary is separately conducting an independent review of the personal conduct of individual employees of the Department and the adequacy of the actions of the Department's review of that conduct.

I strongly support the actions of the Secretary to date and the distinctions he has made between programmatic and personal conduct issues.

During our last hearings, I was pleased to hear that each Commissioner agreed that a prudent coal leasing program should be reinstituted, and that a further moratorium is not necessary. I believe this is largely due to the responsible manner in which Secretary Clark is proceeding.

While I am concerned that no coal leasing will occur during this calendar year, it is a reasonable delay, given the need for input

from the State, local, and public sectors and the need to restore public confidence in the program.

Secretary Clark, I commend you for the responsive and effective manner in which you are handling this matter.

Before turning to you, Secretary Clark, for your statement, I'll defer to other members of the committee if they have any statements.

Senator Warner.

Senator WARNER. No statement.

Senator HECHT. No statement.

The CHAIRMAN. All right. Thank you.

Mr. Secretary, you may proceed as you see fit.

STATEMENT OF HON. WILLIAM P. CLARK, SECRETARY OF THE INTERIOR

Secretary CLARK. Thank you, Mr. Chairman, for your observations. I will not reiterate the prepared statement, but, rather, ask that it be submitted.

I will merely comment that I took my post at the end of November. The President, as I have testified before, asked me to review the Department's personnel, policy, and process. Within that review, of course, I did look at the overall coal issue.

A moratorium was in place on my arrival, and we were awaiting the Linowes report, on which we have subsequently given our comments.

Our proposals, and they are that, are tentative, subject to further consultation and comment from the Congress and from other interested parties.

At a point in December, I became aware of certain allegations of possible unauthorized disclosure on the part of Interior personnel. At that time, I decided to bifurcate my review, as I pointed out in my letter, into programmatic issues on the one hand, awaiting the Linowes report, and the personal conduct issue on the other. At that juncture, I asked that my review of Linowes report be done by personnel who were not involved in the earlier negotiations and lease sales by the Department.

I also asked the Inspector General to recuse himself from further participation, out of an abundance of caution, and asked the GAO to come in and reopen its earlier review of the questioned leases, which they have done. Also upon Under Secretary Ann McLaughlin's arrival, I asked her to oversee the work of the Department's Deputy Under Secretary Paul Trause, who was an Inspector General for the Treasury Department for 3 years, to conduct an additional review of the allegations of unauthorized disclosure and/or other possible misconduct on the part of any Interior personnel.

We have entered into a written memorandum of understanding with GAO in the parallel investigation to which I have referred. We have borrowed investigators from the Department of Commerce, and the Internal Revenue Service, and sought OMB's assistance in setting up this process, so that what we might call the separate but parallel track in our coal review is proceeding. I hope to receive their recommendations by the end of May, some 7 weeks

away, if not sooner, and will report to your committee on those recommendations at that time.

Overall, we are certainly pleased to receive the Linowes recommendations, which you stated yourself in opening. With one exception, and Dr. Linowes understands our concern over one of the minor recommendations, we have accepted those recommendations, placed them into our schedule and our planning. We have given an outside date of December 31, to complete our decisionmaking process so that we can get back into the business, our duty starting in 1920, in the management of our coal assets.

While we think we know where we're going, we will require further consultation with the Congress before actually going into the rulemaking and possible legislation that would be required in one of the recommendations; namely, negotiation toward arriving at fair market value in certain limited circumstances.

That is the extent of my opening observations, Mr. Chairman. We appreciate the good communication with your committee and your staffs as we wade through this very complex area which has had a complex history. We would hope to avoid some of the mistakes of the past.

[The prepared statement of Secretary Clark follows:]

STATEMENT OF WILLIAM CLARK, SECRETARY OF THE INTERIOR, BEFORE THE SENATE ENERGY AND NATURAL RESOURCES COMMITTEE ON THE COAL LEASING PROGRAM

April 5, 1984

Mr. Chairman and members of the Committee, I appreciate the opportunity to appear before this Committee to discuss the Department's coal leasing program and our review of the program. One of the major inputs into my review was the report of the Commission on Fair Market Value Policy for Federal Coal Leasing.

As you know, under the Mineral Lands Leasing Act of 1920, the Department of the Interior has responsibility for leasing Federal coal. However, there was little demand for Federal coal and thus little leasing activity, until a rapid increase in demand and lease sales in the 1960's. In 1971, a moratorium was imposed by the Department on the leasing of coal lands, based on a concern that lands were being leased primarily for speculation rather than for development.

Because of the 1971 moratorium and subsequent events, coal leasing on a full-scale did not resume until July 1979, when the Department issued regulations implementing the Federal Coal Leasing Amendments Act of 1976 and other significant changes in the law. The first major sale under this program was held in January 1981. Between that date and September 1983, 14 regional coal lease sales of various sizes were held.

In July, 1983, in response to questions raised concerning program procedures, the Congress mandated that the Secretary establish the Commission on Fair Market

Value Policy for Federal Coal Leasing. The Commission was instructed to review and recommend policies and procedures to ensure receipt of fair market value for Federal coal leases. On November 4, 1983, the Congress imposed a moratorium on coal lease sales to remain in effect for 90 days following submission of the Commission's report to Congress. The Commission submitted its report to the Congress and provided a copy to the Department on February 17, 1984.

In November 1983, when I became Secretary of the Interior, a review of our coal leasing program was already underway. After examining both Departmental records and the Commission's report, I concluded that two distinct groups of issues must be considered:

- Programmatic issues involving the policies and procedures used to establish leasing levels, select tracts, and appraise the value of tracts and

- The conduct of individual employees in specific lease sales, and the adequacy of Departmental review of their conduct.

These are separate issues, and therefore require separate and independent reviews.

To address the programmatic issues, I convened a working group from within the Department composed of employees not involved with the coal leasing program during the period in question. This group reported directly to a Deputy Under Secretary under the supervision of the Under Secretary. In addition to its review function, this group was given the responsibility of assisting in my continuing study

of the coal leasing program. This review, including the formulation of proposals for improved procedures, has been completed and was transmitted to the Congress and this Committee on March 19.

I further asked the Deputy Under Secretary under the general direction of the Under Secretary to review all questionable conduct by individual Department of the Interior employees, including any questionable investigations of such conduct. This review is underway and is being completed in conjunction with the General Accounting Office. The field work is being conducted by individuals detailed from the Internal Revenue Service and Department of Commerce, and by GAO staff. Because this review may require the collection and development of factual materials not now of record within the Department, its completion date is uncertain. Of course, any information evidencing a violation of criminal law will be referred to the Department of Justice. When the review is completed a report will be provided to you.

The results of this review of past individual employee conduct are not expected to affect or in any way relate to our proposed procedures for future sales. These procedures have been thoroughly examined by the Department's working group, by the Under Secretary, and by myself. Thus the programmatic improvements we have instituted within the Department are not dependent upon the examination of the conduct of Interior employees in past sales, and it would be counterproductive to delay resumption of the coal leasing program until those investigations are completed.

Our programmatic review, as well as the report of the Commission, convinces me that by the end of the year we will be able to proceed with a program for orderly leasing of Federal coal resources. As the Commission recognized, the continuation of a proper coal leasing program is in the national interest and essential to the national security. However, the Department seeks only that use of Federal coal which promotes the economic gains from efficient use of our coal resources, reduces energy dependence, while at the same time conserving total energy resources and protecting the environment. Therefore, I have directed that potential environmental consequences resulting from implementation of any proposed Departmental policy and procedural changes be thoroughly studied before final decisions are reached.

In addition, as you know, the Congress has directed the Office of Technology Assessment to examine the Federal coal program's ability to lease Federal coal in an environmentally compatible manner. The findings of this Office of Technology Assessment report will be reviewed and the Department will report to the Congress on its assessment within 45 days of receipt of the report. Any required adjustments to the proposed Departmental procedures will be made.

The procedures we have proposed as a result of our programmatic review to date incorporate all but one of the administrative recommendations made by the Commission. They provide a comprehensive framework within which responsible decisions can be made regarding future coal lease sales. These proposals would restructure the Department's regional leasing process to permit specific leasing level decisions to be made closer to the times of the actual sales, if any, thereby

providing the Department with the benefit of more timely and complete information and with greater flexibility to make leasing decisions which will meet current market conditions and needs.

The proposed procedures provide long-range strategic planning guidance for the public concerning goals of the program based on best available estimates of future events. They provide for close consultation with State and local governments, through the Federal-State Coal Advisory Board and Regional Coal Teams, throughout the process.

The procedures are designed to develop mechanisms for selecting tracts and for conducting lease sales which build on the Commission's general recommendations. We proposed specific procedures that will generate increased competition and as such assure the receipt of fair market value. Nevertheless, as the Commission recognizes, there will be a large number of tracts that receive but a single bid because of land ownership patterns. Accordingly, we have suggested and will make available for public comment alternative concepts for lease sales which, if enacted by the Congress, would allow the Department to negotiate the selling price of these "captive" coal tracts.

Finally, the proposed procedures incorporate Commission recommendations for validating the Department's appraisal methods. Prior to issuance of the Commission's report, the Department had contracted with the Colorado School of Mines to assess our appraisal methods. Completed before the Commission made its report, the assessment concluded that the Department's appraisal methods were

similar to those used by industry and were appropriate. Also, the Oak Ridge National Laboratory is studying the Department's use of specific variables in appraisal processes. We expect to receive the final report in early summer. With these studies as input the Department will develop, propose, and publish its appraisal method, as recommended by the Commission, for public comment, by September 1, 1984.

To assist in implementing the proposed program, the Department has established, in the Bureau of Land Management, a centralized coordinating group for policy and analytic guidance, as proposed in the Department's Fiscal Year 1985 budget request. The formation of such a group was endorsed by the Commission.

The Department has prepared a detailed list of 68 action items necessary to implement the Departmental proposals made as a result of its review of the Commission's recommendations. The Bureau of Land Management has grouped related action items together for the purpose of preparing work schedules using their management-by-objectives (MBO) system. The MBO system is used by each of the Department's bureaus and enhances "project management." It gives managers the ability to make sure that the steps of complex projects are completed on time, so that the entire project is completed on schedule. The dates for completion of the action items are those dates specified in the Department's response to the Commission's recommendations. By December 31, 1984, the Department expects to have in place a decision-making process which will allow it to responsibly determine whether specific proposed sales will be held, the amount of tonnage involved, and which tracts will be offered.

The Commission's report has dealt with the complex issues involved in our coal leasing program in a thorough manner and one that has stimulated public debate on it. I welcome this public interest in our program and hope that through this process, any new procedures the Department implements will promote public confidence in our coal leasing program.

I look forward to working with the Congress in a mutual effort to address the recommendations of the Commission and to ensure that the Federal coal leasing program fully serves the national interest.

I will be pleased to respond to any questions you may have.

COMMISSION ON FAIR MARKET VALUE POLICY

FOR

FEDERAL COAL LEASING

Federal Coal Leasing Levels

III-1. The Government should establish and announce in a timely fashion a coal leasing schedule to promote predictability and stability of Federal leasing actions. In doing so, the Government should have flexibility to change the timing of lease sales and the quantity of coal offered based on its assessment of emerging market conditions.

Comment:

We have argued consistently that the ready availability of Federal coal is necessary to ensure vigorous competition in coal markets and the lowest possible price for coal based energy. This notion is predicated on the assumption that the government offer federal reserves in a predictable and stable fashion and in this regard we support this recommendation.

We have no objection to the proposition that the government "should have the flexibility to change the timing of lease sales and the quantity of coal offered;" however, we would draw the important distinction between "flexibility" to meet unforseen circumstances such as environmental clearances, surface owner consent, agreements, etc., and flexibility based on its (government's) assessment of emergency market conditions. Coal leased today is for anticipated production 10-20 years in the future. Indeed, Western coal production today is from leases largely issued in the 1960's when the demand for Western coal was all but non-existent and expected to grow very little. Leasing levels based on assessment of future demand suffers the following a) more than likely, it will be wrong, with the consequences of underleasing in terms of driving up

prices unnecessarily far out weighing any costs of overleasing; and b) it is anti-competitive as the Justice Department clearly pointed out in criticizing the previous Administration's program that was based on a similar notion.

III-2. To maintain a responsive and orderly coal leasing process, the States, through their participation in the Regional Coal Teams and the Federal-State Coal Advisory Board, should continue to play a significant role both in establishing leasing levels and in setting leasing schedules. The inclusion of State personnel in providing staff support to the Regional Coal Teams is encouraged.

Comment

The Regional Coal Teams and the Federal-State Coal Advisory Board currently play a significant role in the leasing process and we support their continued involvement.

III-3. The Government should not seek to raise the price above the competitive market level by limiting the amount of coal that Federal leasing policies make available to the market. But neither should it lease so much as to flood a depressed market.

Comment

We agree that leasing adequate amounts to ensure competition for future markets is the cornerstone of the federal coal leasing program, however, we are troubled by the operational problems associated with the statement that the government should not lease so much as to flood a depressed market. Again, leasing today is for markets that may or may not emerge 10-20 years in the future. While companies are mindful of their short term cash flow situation, bonus payments today are reflective of long-term expections, not current market conditions. The government's assessment of future markets will

almost certainly turn out to be wide of the mark (see attached study by Harry Perry that shows the wide variance between predicted energy demand and actual). If the government is bullish, maximum competition will be assured and government revenues from royalties will be maximized, simply because the wide spread availability of Federal coal will maximize federal production. If the government is bearish, precisely the opposite occurs.

We do not believe that the government, as the clearly preeminent owner of western coal, should restrict access to reserves in order to create an artificial scarcity which would ensure high bonus bids. Rather, the federal government should ensure an uninterrupted supply of coal to meet the energy needs of consumers in the 1990s and beyond, as is the case under current policy.

III-4. The Government should seek to provide adequate diversity in quantity and quality of Federal coal lease holdings offered for sale, to encourage active competition among mining companies because of the benefit to consumers such competition may produce.

Comment

We concur that providing for diversity in lease holdings offered encourages competition among mining companies with the consumer being the beneficiary. While such goals are laudable, we believe that as a practical matter, the lack of competition and effective protections for captive shippers of Western coal has effectively allowed the railroads to capture these consumer benefits.

III-5. The quantity of coal leased should be determined so the Government will receive a fair return consistent with the achievement of other public policy objectives, such as promoting efficient land use and environmental planning and conserving appropriate amounts of coal for the future.

and competitive lease sale system. While we recognize PRLA coal as a component of the total, we would oppose any effort to prejudice the adjudication of PRLA's based on the Department's determination of the proper amount of coal to be leased in future sales.

Selecting Tracts for Coal Leasing

IV-1. Tracts should be selected in such a manner that their characteristics will enhance the attainment of fair market value.

Comment

We have long maintained that the tract delineation process presents one of the most difficult tasks for DOI. We believe the attainment of fair market value is within the tract delineation process and would urge the Department to attempt to delineate tracts so as to make them the most economically attractive to the operator. We would stress, however, the practical difficulties of arriving at what the government and the operator's see as the most economically attractive tract. As a general proposition, the move attractive it is to the operator, the more revenue that will accrue to the government since chances of producing the reserve will be maximized.

IV-2. The Interior Department should sponsor more drilling for use in tract delineation and it should encourage cooperative drilling in which any additional firms could participate by paying a pro-rated charge.

Comment

We support the recommendation provided it does not result in a company being forced into participating in a government drilling program. However, important budgetary constraints and tradeoffs within the leasing program must be considered when recommending that the government sponsor more drilling.

Comment

We support this recommendation believing that the multiple land use system which the department employs assures that public policy objectives are analyzed and accomplished.

The federal coal leasing program culminates years of effort designed to ensure that adequate supplies of coal are offered to meet our growing energy needs while at the same time promoting efficient land use planning and environmental protection. The commission recognized the importance of achieving these dual policy objectives in the leasing level recommendations, and we concur with its finding.

III-6. Because appraisal of the adequacy of coal leasing is critically dependent upon the extent to which pending preference right lease applications are granted and the Interior Department has proceeded very slowly in this area, review of these applications should be rapidly completed, preferably within the next two years. Stress should be on those areas in which a lease sale is scheduled in the next year or so. In deciding on the appropriate level of future coal leasing, the amount that might be provided through preference right leasing should be taken into account.

Comment

The Department of the Interior's preference right lease application system has been characterized by delay and confusion, and while the DOI is obligated to adjudicate all remaining PRLA's by December 31, 1984, we are concerned that this deadline may be extended as a result of the commission's actions. It is vital that this matter be resolved with as close adherence to the existing deadline as possible recognizing the existence of the current "temporary" moratorium.

The PRLA system is legally and functionally separate from BLM land use planning

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IV-3 Cooperative leasing procedures are desirable to obtain logical mining units that may be reasonably expected to receive greater bidding competition than fragmented coal holdings.

Comment

We do not object to cooperative leasing so long as it does not include leasing by railroads as a way around Section 2(c) of the Mineral Lands Leasing Act.

We object to a railroad or its affiliate, being allowed to participate as a bidder in the leasing offering because of their unique and singular knowledge of the reserves underlying their land holding as well as the bidding advantages granted them by their fee ownership of some portion of the tract. Although a scheme of sharing drilling data and offering the non-federal portion on the same terms and conditions as the Federal portion would largely overcome the railroad's bidding advantage, the transportation monopoly enjoyed by the Western railroads remains as the major obstacle to following this recommendation.

IV-4. The exchange of Federal and non-Federal coal tracts should be pursued more vigorously, but in a careful and prudent manner, to consolidate Federal and non-Federal coal lease holdings of equivalent value into logical mining units.

Comment

The commission's decision to recommend that DOI vigorously pursue the exchange of federal and non-federal coal tracts to consolidate holdings into logical mining units does, when applied to railroad fee holdings, represents one of the most troubling aspects of the report.

The recommendation blatantly disregards: (1) the market advantages granted to railroads as a result of their transportation monopoly and the freedoms granted under the

Staggers Rail Act and (2) the economic advantage which would be granted to the railroads by virtue of their fee ownership of the newly formed tract.

We continue to believe that repeal of Section 2(c), or its de-facto repeal as will be accomplished through exchanges, will: (1) undermine the viability of the leasing system resulting in lower bids for federal coal leases; (2) reduce competition for many federal tracts by granting the railroads a tremendous economic advantage; and (3) enable the railroads to become the dominant producers of federal coal, which will, in the long run, seriously diminish the government's ability to receive fair market value for its coal.

Coal Lease Sales Procedures

V-1. The Government should have leasing policies that distinguish between new production tracts on the one hand and maintenance and bypass tracts on the other.

Comment

We do not object to this concept; however, see our comments on V-6 regarding negotiated sales.

V-2. In the conduct of lease sales the Government should continue to rely on bonus bidding.

Comment

We support this recommendation believing that the cash bonus and fixed royalty system now utilized by the government reflects a judgement of the overall value of the proposed lease.

While we believe the bonus bid as a component of the total federal revenue

received has been vastly over emphasized once the lease is producing, it does increase the probability that the winning bidder will have the financial capacity and commitment to bring the lease into production.

V-3. Intertract bidding in appropriate cases is a desirable method for leasing Federal coal.

Comment

We continue to find the use of intertract bidding to be a serious misapplication of economic theory to a program which demands a precise tract-by-tract approach in making value determinations. Specifically, experience shows that variations in coal quality, seam thickness and overburden can significantly impact mining costs and hence the value of the coal. It is not appropriate to assume that a ton of coal is merely a ton of coal -- as intertract bidding implies -- even if the tracts under consideration are in reasonable proximity. Further, we believe it is a misallocation of the government's and companies' resources to prepare for leasing more tracts than are intended to be sold. This is especially true in the government's case, given the lengthy and expensive procedures employed in studying and preparing tracts for sale.

V-4. To promote more competitive bidding, the Government should test the feasibility of and experiment with a variety of auction techniques.

Comment

We believe that any comment regarding this recommendation requires an understanding of the specific "auction techniques." While such experimentation can be a valuable tool, provided the techniques are published well ahead of the lease sale, we would urge extreme caution.

V-5. Minimum submissible bids should be established on a regional basis. This minimum should be expressed as an amount per ton.

Comment

We believe that setting minimum submissible bids on a regional basis can have serious and harmful practical results, due to variations in coal quality, minerability and marketability within a region. The minimum acceptable/submissible bid represents nothing more than a screen to keep nuisance bids out, rather than determining the value of the coal. Following each lease offering, a Sales Panel conducts a thorough review to determine if a particular bid constitutes fair market value. Seen in this light, the minimum acceptable bid does in fact represent nothing more than a screen which should be expressed on an acreage basis, rather than an "amount per ton," due to inexact reserve estimates. If set on a regional basis, the temptation to set the bid high enough to reflect the most valuable tracts would in essence discourage bidding on the least attractive tracts, thus defeating the purpose of the regional sale.

V-6. Wherever possible, leases should be sold on a competitive basis. However, where reasonable efforts to obtain competitive bids have failed, the Government should have authority to negotiate a fair price.

Comment

This recommendation has, in our opinion, important public policy concerns which are inherent in the nature of any negotiation. Although negotiated sales may be a perfectly satisfactory solution, such sales of federal coal could generate charges of insider dealings, create controversy and confusion, and thus render them inoperative. What is important to remember is that while a tract may receive only one bid, that does not mean the bid did not represent fair market value. Rather, it indicates that the unique characteristics of the tract render it attractive to only one potential lessee.

It must be remembered that in any negotiation, just as in any competitive sale, the government must calculate a floor price below which fair market value will not be received, keeping in mind that the government, as well as the operator, are the losers if that price is set artificially high. In fact, the government will always loose more in production royalties than it stands to gain from marginal changes in bonus bids on these tracts. Seen in this light, the benefits of negotiated sales may be outweighed by the costs in terms of public apprehension.

V-7. The industry bids received on tracts in a lease sale on which there was extensive competition, along with the Government's pre-sale appraisals, can constitute appropriate and important sources of information for post-bid acceptance and rejection decisions.

Comment

We believe the current program, which encompasses both a pre and post-sale evaluation as well as a reliance on bidding competition, should be maintained as this recommendation presumes.

V-8. The Government should take the necessary steps to ensure the security of confidential data prior to lease sales.

Comment

We agree.

Appraisal Methods

VI-1. The Interior Department employs basic methodologies for estimating fair market value that are widely accepted in the conduct of appraisals by industry and Government. However, model design, input data, and analysis should be improved.

Comment

We would agree that the basic methodologies employed by DOI are generally accepted by industry. However, we must reserve comment on the adequacy of certain specifics. Modeling is highly subjective and should be reviewed on a factor-by-factor basis rather than in a generic sense as this proposes.

VI-2. A "small business" tax adjustment should not be made in computing appraisal value.

Comment

We are currently evaluating this recommendation to determine the effect of eliminating this tax adjustment.

VI-3. The comparable sales adjustment procedure should include factors, such as production rate, stripping ratio, or coal quality, that are identified as appropriate through a comprehensive review of appraisal techniques.

Comment

We agree that these adjustments which are presently utilized should be continued. The unique characteristics of individual tracts makes comparisons, without the use of adjustments, inadvisable.

VI-4. Where a Federal tract is of use to only one party and no competition is expected, estimates of tract value should be based on the value of the tract to the adjoining mine or coal owner, rather than the "competitive" or "stand alone" value.

Comment

We strongly disagree with this recommendation, believing that this situation is the essence of a negotiated sale. The overriding revenue objectives of both parties is to have the coal produced and the practical difficulty is to find terms agreeable to both sides. Since there is no theoretically sound way to solve this, we are fearful that, given the inevitable political problem of appearing "hard-nosed" in dealing one-on-one with the operator, the government will attempt to drive such a deal that many tracts will be passed.

VI-5. Regulations should require lessees to report details of lease assignments.

Comment

We believe that the current regulations in Section 3452.2-2(F) are adequate, and that no additional regulations need be proposed. While we do not believe assignment data is valid for use in comparable sale analysis, we feel any data that may be relevant is already made available to the government under the regulations noted above.

VI-6. Industry representatives wishing to bid on Federal leases should provide to appropriate Federal Government representatives information regarding prices and other terms of private coal transactions that may be needed for comparability analyses. The confidentiality of such information should be fully protected.

Comment

We take strong exception with this recommendation and urge that it not be adopted by DOI.

Specifically, we cannot support any recommendation which would require the industry, as a condition of bidding, to turn over the proprietary terms of private coal transactions. We question what value private transactions, which often carry terms and conditions quite different from those of a federal lease, will have in a comparability analysis. A data base compiled from information submitted by potential bidders, on private transactions, is not likely to assist the government in determining "fair market value." Rather it may, given the great divergence in tract size and quality, yield results which cause many tracts to go unleased because of inflated values. While we do not object to making non-proprietary information available, and have in fact done so in the past, we remain opposed to a blanket requirement as proposed in this recommendation.

VI-7. The Interior Department should enhance its capacity to perform appraisals. Preferably this should be done by expanding its own in-house resources. Where necessary, the Department should rely on outside appraisers, or some combination of these approaches.

Comment

This is an issue involving the organizational structure of the program and upon which we have no comment.

Key Statutory and Related Factors

VII-1. For post-1976 leases the 10-year diligent development requirement should continue in place but it is recommended that Congress consider allowing a

10-year extension to be provided on the payment of advance royalties on an escalating basis. This escalation basis should be determined at a level designed to stimulate timely development.

Comment

We believe that rigid diligent development requirements are one of the single most important factors robbing the government of fair market value for its coal. Economic theory and practical experience shows that the current 10-years "all or nothing" requirment does not make sense (again, see attached study by Harry Perry). While it has been argued that diligence ensures that production ensue in a timely manner, we believe the inherent uncertainties in marketing and bringing a large western mine into production are largely beyond the control of the lessee and thus warrants flexibility.

The escalating advance royalty basis which the commission has recommended adds some flexibility for operators who "can't quite" make the 10-year deadline of producing in commercial quantitites. However, it ignores the more prevelent problem of coal mining -- finding a market. Diligent development requirements such as existing today do not force production -- they cannot -- but simply lead operators to avoid federal coal where possible, instead preferring state or fee coal without such onerous requirements.

VII-2. For pre-1976 leases the lessee should begin paying advance royalties at the time of the next lease readjustment, and on the same schedule as may be paid for post-1976 leases after 10 years from lease issuance.

Comment

The commission has recognized that the so-called "Section 3" problem is the most important problem facing the government and holders of pre-1976 leases today and that it should be repealed. Congress in fashioning Section 3, was attempting to deal with the problem of imposing diligent development requirements on pre-1976 leases without violating the terms of those leases. Given that these leases will have the 10-year diligent development requirement imposed at the first readjustment after 1976, and the fact that virtually all of them will have been readjusted by 1990, Section 3 is an "interim " measure. What is needed is a solution to the Section 3 problem that allows pre-1976 leases to continue to compete for new markets while still maintaining a competitive market for new leases, while being mindful of congressional concerns that holders of undeveloped pre-1976 leases not continue to pile up new leases.

The Commission's recommendation is wholly unacceptable in that it will force the premature forfeiture of undeveloped reserves, and may also destroy the economic value of any leases retained. (See attached sample estimates of holding costs on typical leases.) Furthermore, although the concept of a holding fee to avoid the Section 3 penalty has merit, the practical problem is now to set a fee that is politically acceptable without forcing massive relinquishment of leases. An alternative approach which has been received favorably received by members of Congress and the industry is to remove the Section 3 ban on leasing of other minerals, and then allow holders of undeveloped pre-1976 leases to bid on new federal coal leases, but if successful "give back" an equivalent amount of pre-1976 tonnage or pay a holding fee on their pre-1976 coal

equivalent to the amount of new coal obtained. This approach offers maxium flexibility to meet congressional concerns during the "interim" Section 3 period.

VII-3. The requirement for consent of qualified surface owners before leasing should be maintained. However, in light of difficulties reported, it is recommended that Congress consider reexamining the need for limitations on payments for surface owner consent.

Comment

We continue to believe that so long as surface owners are allowed to demand an overriding royalty not to exceed 50 percent of the federal royalty -- as well as a bonus payment which is without limitation, the federal government's ability to receive fair market value will remain in doubt. We are aware of the controversy surrounding this issue although the industry has not at this time taken a position on the matter.

VII-4. It is recommended that Congress consider giving the Secretary of Interior administrative discretion to reduce Federal royalty rates for coal tracts prior to a lease sale, where current royalties would have adverse effects on production of the resource.

Comment

We support this recommendation, believing that administrative discretion to reduce federal royalty rates enhances competition and bidding interest for many tracts which would not otherwise be bid upon.

VII-5. The base for calculating Federal royalty payments should be the F.O.B. price minus all State and local severance and similar taxes.

Comment

We wholeheartedly support this recommendation and would further urge that black lung taxes and reclamation fees also be excluded prior to calculation of the federal royalty payment.

We have historically opposed DOI procedures which calculate the federal royalty on the "gross value" of the coal and are encouraged that the commission has also recognized its negative impact.

VII-6. To promote greater competition in transporting Federal coal and to achieve fair market value for Federal coal, it is recommended that Congress consider instituting a review to assess whether shippers of Federal coal are adequately protected from anticompetitive or discriminatory practices when slurry pipelines or other forms of transportation competition are insufficient.

Comment

The commission has recognized what continues to be the single largest impediment to the growth of the western coal industry, namely, transportation rates. We have long argued that our inability to develop transportation alternatives to railroad haulage will deny the benefits of cheap and abundant western coal to the consumer.

While we applaud the commission's foresight and endorse the call for Congress to institute an immediate review, we are concerned with how the term "insufficient" will be interpreted. We prefer that this term be deleted and that language be added in its place which would read: "not in place to provide effective transportation alternatives."

Organization and Management

The recommendations contained in this section address the organizational structure and management of the coal leasing program. Because of their internal nature, we have no comment on this set of recommendations.

The CHAIRMAN. Thank you very much, Mr. Secretary.

I would note that a rollcall has just commenced on the floor of the Senate. Members will necessarily have to run over there for a vote, and I apologize for that interruption in the continuity of the hearing. But perhaps we could keep the hearing going as Members go and return.

You indicate that there will be no leasing during this calendar year. Does this include bypass leasing, lease modifications, and maintenance tracts other than those identified in the Interior appropriations bill?

Secretary CLARK. Mr. Chairman, we feel that it's in the national interest that the leasing and production continue under the emergency exceptions, the maintenance and bypass types of leasing. In fact, Penoia-D is an example, falling within those exceptions, which will continue unless otherwise directed under those exceptions.

The CHAIRMAN. Can you explain in a little more detail for the committee how you intend to respond to the OTA report once it has been completed?

Secretary CLARK. Well, I believe we expect that report by mid-May. As with the Linowes report, I have not spent any time in reviewing what we hear it may or may not contain, and, it is my understanding that the jury is effectively still out.

When we receive the report, certainly, we will move into it quickly. It will play its part.

The CHAIRMAN. Thank you.

Senator Ford.

Senator FORD. Thank you, Mr. Chairman.

It seems like it's one of those days where you have everything waiting for you and you can't get caught up. So I'm trying to get caught up now.

If I could follow up on Senator McClure's question. In reviewing the study, OTA, do you expect to produce a response document along the lines of the one we're commenting on today?

Secretary CLARK. I think so, Senator Ford. We will review it quickly, and if you would like a formal response, we would certainly do that.

Senator FORD. Well, I don't know that we will need a formal response.

Secretary CLARK. Well, we will provide a written response, at least.

Senator FORD. Something that we can get our hands on to look at and to read.

In the Department's review of the report you addressed the Commission's judgment that section 2(c) of the MLA should be amended to allow railroads or their affiliates to bid for Federal coal leases under certain conditions.

There's no mention, however, of the Commission's other two judgments regarding section 3 of FCLAA and the granting of eminent domain authority to coal-slurry pipelines.

Did the Department consider these two judgments?

Secretary CLARK. Yes, Senator. And as to under certain circumstances, those are being developed now. We feel we have come a long way since 1920 in this area, and it would be in the national interest to seriously consider removing that prohibition and apply-

ing the same stringent rules to railroads and affiliates that we do to other interested parties.

And on your second point, which is——

Senator FORD. The coal-slurry, the eminent domain.

Secretary CLARK. Yes. President Reagan last year stated that he felt that the eminent domain power for this purpose was not in the national interest. We felt then, and I believe now, that certainly this should be a willing-buyer/willing-seller situation in the creation such a line. However, if circumstances change, we're willing to look at them, and it is under continuing study.

Senator FORD. Well, under section 3—I'm not sure of my technical language, and I yield to your technical background, or legal background. Section 3, I believe, says that if you have a coal lease and you have not exercised any of that lease by extraction, I guess, that you cannot participate in other leases such as coal, oil, gas.

Do you have any feeling about that at all?

Secretary CLARK. Yes, I have, Senator.

You have alluded to past experience. There's a maxim in the law that the law abhors default. I think that the feeling of the Commission and ourselves is that, under the heading of diligence, we can create incentives and disincentives to avoid speculation, hoarding, warehousing, whatever occurred, for instance, before the 1971 moratorium. As a result of abuse of the system, some million acres were leased, but only about 10 million tons produced, clearly out of proportion to the lease. I think we can reach the same diligence requirements by something other than an immediate abrupt cancellation of the lease.

I thought the Commission did a very good job at making suggestions in this regard, such as greater payment of rental and other fees to maintain those leases beyond the 10 years that are now referred to. After all, it takes about 10 years to really get into production, and we feel, again, that it's in our interest to force diligence on the one hand, but not by abrupt default on the lease.

Senator FORD. What you're basically saying is that if you go beyond a 10-year period you ought to pay more for your lease in order to maintain it?

Secretary CLARK. Yes, and other suggestions, such as moving or exchanging for other lands; if it's become apparent that the lessee has good cause for not having gotten into production in that period, maybe exchanging other parcels. At least we ought to create greater flexibility and less injustice in the abruptness of the default.

Senator FORD. Mr. Chairman, I have several questions and I'm going to try to get through them rather quickly. There may be one or two that I will send you in writing, Mr. Secretary, and I would like you to respond.

The Commission report contains numerous findings that never culminated in formal recommendations.

Did you find those findings exclusive of the 36 recommendations useful; if so, which ones?

Secretary CLARK. Senator, yes. There are some, I guess, 68 so-called action items, which didn't reach full recommendation. And we find that we can substantially comply with those. They were all helpful, and we can certainly speak to those, one by one, if you wish.

Senator FORD. Could you make them available to the committee, the list of the 68 action items, I guess they're called, aren't they—unless they're to implement the proposal?

Secretary CLARK. Yes, we'll do that, Senator.

The CHAIRMAN. Senator, could you yield for Senator Warner?

Senator FORD. Yes, I'd be glad to.

Senator WARNER. Thank you, Mr. Chairman, Senator Ford.

Mr. Secretary, first, I want to say how personally pleased I am that the cooperation your Department has given me on a number of matters this week that were largely handled by your Under Secretary.

Mr. Secretary, there has been expressed concern within the coal industry of the impacts of competition of coal in the West by fee exchanges entered into by the Department of the Interior.

In your report on page 17, you specifically mention this problem and indicate that the Department recognized that it is a major concern.

Would you kindly provide this committee with your views as to how you intend to implement the recommendation concerning this issue and how will this implementation affect future coal exchanges before the Department?

Secretary CLARK. We are looking at implementation of the recommendations now, Senator which would give us, we feel, far greater flexibility in creating more marketable tracts, but I really can't give you more detailed explanation than that.

Senator WARNER. Would you expand the reply for the record, please?

Secretary CLARK. I shall, Senator.

Senator WARNER. I appreciate that very much.

Thank you, Mr. Chairman.

Senator HECHT [presiding]. Mr. Secretary, you've got the third team now. [Laughter.]

With strict instructions not to let you leave until the first team gets back, they have further questions for you.

Secretary CLARK. I'll wait.

Senator HECHT. So let me throw out a philosophical question which you can talk about.

You and I both got into this political game about the same time in the 1960's, different States. But coal has run many spectrums, many circles in that time, where coal was a dirty word, and we had problems in the Middle East with oil, and coal got to be a nicer word.

And now with the trouble in the Middle East, where do you see coal in the next 20 years?

Secretary CLARK. Well, Senator, it's certainly a vital commodity. I would come at the question as I guess you do, based on your own background and experience; and that is, in its relation to national security and our strategic ends; realizing that the Soviet Union has all the coal it needs in addition to being an oil and gas exporter, while at the same time we have a 30-percent dependency on foreign oil.

As we know, oil and natural gas are parallel fuels to coal. While at the present rate of consumption versus production we may see the end of oil as we know it today in the 20-year period you have

just mentioned, some suggest that our 165 billion tons of coal could carry us for at least 100, maybe 200 years, as we project our needs and alternative sources for energy for fuel.

So coal's importance, I think, increases by the day. My concern is, in the short time I've had to review its history and the moratoria, in the on-again/off-again relation that we have had with coal, we have to get some constancy, some predictability, some stability in the marketplace, production, and in consumption. So, it is a very high priority in the Department at this time, and I hope that it will remain at that level, so that we can come together with a flexibility that we need as managers to avoid some of the, I believe, grave mistakes in the coal area of the past.

Senator HECHT. Well, how would you classify these mistakes?

Secretary CLARK. Of course, an example is when coal came into prominence in the early 1960's, and a lot of leasing took place. As I mentioned earlier, many felt that it had reached the unconscionable speculative level, and some suggest that we over-reacted when we realized that we had a million acres leased, but production of less than 10 million tons on an annual basis.

So the clamps went on. A moratorium, which I am reminded comes from the Latin word meaning death; put the clamps on coal leasing. Then when they came off in 1978, the pendulum went the other way, production jumped to 105 million tons, with some suggesting some surplus of production from then on.

I am not so sure that there has been surplus supply, but I'm afraid that we have not allowed the market forces to play their part. I just think that we need a flatter plane with greater flexibility on the part of the Department to go to alternate means to reach fair market value from those that we have been limited to in the past—and certainly the Linowes Commission agrees.

Senator HECHT. Well what do you think we in Congress should be doing, looking ahead over the next 20 years, for the coal industry? What would you like to see us do?

Secretary CLARK. Well, I think that if we could have the blessing from the Congress on the Commission's recommendations, the Commission that the Congress created, if we look at the OTA recommendations as well, and if we have close coordination between the Congress and the Department we can avoid the stop-and-go problems of the past. Moreover, I think the idea of allowing negotiation in some circumstances is important.

When the consumer goes onto a car lot, there is a suggested price. The salesman gets together with that prospective purchaser and they arrive at fair market value. It's kind of a mysterious process. It may be above, it may be below the sticker price.

If the salesman is discovered to be selling the car at less than what the lot owner feels is fair market value, he corrects the salesman, or gets another salesman.

At the same time, if those cars sit there a while, again, within the competitive process, a certain number of them are sent on to the monthly auction. Again, the mysteries of the marketplace take over, but you again have fair market value by which the process is directed.

In addition, I think we need the flexibility, suggested by the Linowes group, that we have not had in the past to do our duty by

keeping a good supply moving to the consumer without manipulation on the part of Government, at all times, of course, recognizing the environmental concerns and the necessity for environmental soundness.

I think working together with the Congress we can establish that kind of program for now and in the future.

Senator HECHT. Do you plan on having any papers or such with a 25-year plan of where America should be going in the coal industry?

Secretary CLARK. Well, Senator, this is my hope. Again, coming to this duty from the perspective of national security, recognizing our dependency now and probably for many years, I realize we cannot seek total independence. We look for a reduction of dependency in fuel and strategic and critical materials.

I agree with you, that we do have to look much farther down the track than perhaps we have in the past to avoid the stop-go situation that we've suffered under for many years.

Senator HECHT. Although in our State we do not have coal, we do have mining, and one thing unique about the coal and mining industry, you can't start 1 day and have coal or have mining. You have to look ahead down the line to research and the technology and the money that goes into these different areas where the materials are found.

So I think we do need something down the line so that these people can make a long-range projection. That seems to be a problem we have had the last 20 years with the industry.

Secretary CLARK. Yes, Senator.

Senator HECHT. They don't know where they are.

Secretary CLARK. We are now looking at a 5-year schedule, but I think planning itself should go far beyond that period. Again, it takes 10 years to bring a suggested tract to production.

We have a breakdown on segmenting the process in both land planning and activity planning. I am afraid it is too easy for both Government and industry to lose sight of that leadtime required to move a ton of coal. But I agree with you, we should be looking beyond even the 10 years, to 20 and beyond.

Senator HECHT. That's my feeling.

Senator Evans.

Senator EVANS. Thank you, Mr. Chairman.

I'm sorry that these interruptions keep occurring. Let me get back from Central America to coal leasing now.

I believe it's accurate that the Department has, in essence, accepted all of the recommendations of the Commission, with the single exception or the single major exception at least of 6 to 6, which was providing of information from coal companies.

Secretary CLARK. Yes.

Senator EVANS. Has the Department considered the possibility of doing something of the same nature we did in kind of a similar situation in the development of the Pacific Northwest Power Plan when we wanted to get what appeared to be proprietary information from a series of companies in an industry so we could better judge the potential for industrial conservation.

They were afraid both of antitrust problems, they were afraid of proprietary information getting out, and they agreed that they

could do it by submitting that information to an accounting firm and having the accounting firm by the trustee, as it were, for the information, wash the identity of the companies, but provide then to the council—in this case the power council, the information which we needed without feeling that they were giving up proprietary information.

Is that a possible thing to do here, or do you just believe that the information itself is of no great value?

Secretary CLARK. Senator, the information is of value. We receive a lot of that information now. It's a rather open market, not unlike offshore exploration. The proposal of a third party masking the derivation and yet producing the work product I believe was considered by the Commission, but, on balance, we feel that it would be an unfair intrusion to demand it. So for the time being we feel that it is not necessary to go forward with it. And Dr. Linowes' comments were to the effect that he understood the Department reservations and that this recommendation was not their most significant one.

Senator EVANS. You mentioned in a comment just a few minutes ago the leadtime problems, which I think we're well aware of, the 10 years or so it takes from lease to production. A good share of that time, as I understand it, is in the development of the necessary environmental impact statements, the other preparation that goes up to the actual development of the mine itself.

I recognize the potential problems of picking and choosing winners and losers, but do you think that there is any potential in taking perhaps a range of some of the most promising areas, to have the Government itself carry them through some of those early stages of environmental qualification; in other words, shortening the lead times and have, in essence, a bank up there of potential leases which could be issued, bid upon, with the knowledge that instead of 10 years only 2, 3, or 4 years might be required to open the mines. We would then at that point be a lot closer to the need for the coal, probably have a better concept of markets out there, and perhaps even a better bid as a result of more certainty.

Does that open up any potential line in your view, recognizing that I recognize the difficulty of feeling that you're somehow choosing the winning versus losing coal leases in the process?

Secretary CLARK. Senator Evans, yes. What you suggest, I think, is occurring just by the very weight of the process as more and more data are built up. Again, I refer to what is occurring in offshore oil and gas exploration. As the process goes forward, industry has built up more and more of a bank itself. That is indicated by the fact that we now have some 18 billion tons under lease. So I would think or certainly hope that that lead time can be reduced as the process becomes more routine and the environmental studies, a more recent concern, become more readily available. I understand that we are now seeing even a duplication in many environmental studies that should allow us to shorten that lead time.

Senator EVANS. But you would recommend in essence that the bidding process still be at the front-end, and that any build up of leases or mines ready to be opened up come by action of the companies who have already won the leases rather than any of that envi-

ronmental work being done by the Government before they're opened up at least?

Secretary CLARK. Well actually, the recommendation of the Linowes Commission, with our full concurrence, is that we move more of that process, particularly the level of leasing, away from the front and toward the end of the process—again, not unlike our OCS experience. But, I think that, with reference to your prior question, a lot more information is being banked as accumulated, even to the point of duplication. As I answered the Acting Chairman Hecht, with greater reliance on the Advisory Commission and on the regional coal teams, and closer coordination with the Congress, I think we are going to see less lead time requirements and much faster processing if we aregiven the flexibility that I think we need. One of the dividends of greater flexibility in appraisals and negotiations, and even the idea of some auction sales is the reduction in time of the total cycle.

Senator EVANS. The Commission recommended that new lease sale offers be used to evaluate the need for and the style of future leasing. Have you come to any conclusions yet once the moratorium is lifted on scheduling of lease sales to leave adequate time between sales to ensure the proper evaluation of demand and need for the next round of sales?

Secretary CLARK. Oh, yes. This is a major element in the process. Yet, we should not allow that concept to reach the point of what has been called "manipulation" to affect the market forces. So, it is a balancing.

Senator EVANS. Thank you, Mr. Chairman.

Senator HECHT. Senator Ford, you walked in first. Do you have some questions of the Secretary?

Senator FORD. That's one way to get seniority. [Laughter.]

Well very quickly, Mr. Secretary. Which of the Commission's 36 recommendations do you have trouble agreeing with, or do you agree with all of them?

Secretary CLARK. Senator Ford, we find substantial concurrence in all of them. We disagree on one recommendation that Dr. Linowes concedes was not the most significant recommendation and he understands our position on it because I believe the Commission was split on the recommendation that industry disgorge information on private sales in arriving at fair market value determinations.

We have received a lot of that information voluntarily from industry. We know a great deal about private sales in the marketplace. We just feel it would be an unreasonable intrusion to make that demand on industry. We would rather see it come voluntarily.

Senator FORD. Of the several Commission recommendations with which you agree which would require additional funding?

Do you intend to submit a supplemental?

Secretary CLARK. Well, after consultation up here and more study on implementation, if requests for supplemental funding are needed, that would be part of the consultative process and we would do so.

Senator FORD. So then, after consultation with whomever, then if the concensus is that you need more funding, you will submit a supplemental budget appropriation?

Secretary CLARK. That would be the normal process. We hope it's not necessary.

Senator FORD. Let me ask one more question, Mr. Chairman.

Would you agree that public participation must be incorporated into the regional coal teams' deliberation?

Secretary CLARK. Oh, I think, as with our offshore leasing program now, Senator Ford, that any time that we can get public participation early in the process, we are going to encourage it. That is, of course, one of the purposes of the regional coal teams being out with the people—where the action is—where we can receive their concerns, both economic and environmental. Certainly, it is far better to hear the concerns of the public earlier when we are in the formulative process than after we have spent a lot of time and money in a proposed lease. I think it is a necessary ingredient and it seems to be working in our offshore processing.

Senator FORD. Well, Mr. Secretary, a number of program changes recommended in your response involve procedural changes which you say will be put out for public comment this summer.

Can you tell us whether or not these changes will be accomplished through a formal rulemaking?

Secretary CLARK. Formal rulemaking would appear to be required in two aspects; one is in the price-per-ton approach. The other is in the alternative lease levels, and the determination of those levels more toward the end of the process after we have gotten our full evidence in, rather than in the beginning of the process.

The only item that would appear to require legislation would be the authority to negotiate some of these sales toward arriving at fair market value. This was a recommendation of the Commission which I do request. I used the analogy to the purchase of a car off a lot, which is willing-buyer/willing-seller relationship through negotiation and all the traditional safeguards in that process. There are many circumstances, I believe, in coal management that would call for the negotiated lease sale, and I think that would probably require some legislation.

Senator FORD. Much of the trouble surrounding the Department may have resulted from the controversial regulatory revisions made by Secretary Watt in 1982. Those changes have been criticized for eliminating public participation in planning and weakening requirements for environmental planning, as well as for changing the philosophy by which the Department sets leasing levels.

There is still, I think, a pending court suit challenging their legality. Is that correct?

Secretary CLARK. Yes, Senator.

Senator FORD. What is your view of Secretary Watt's 1982 regulations?

Secretary CLARK. Well, I have not sat in judgment of any prior Secretary's regulations. As part of my mandate from President Reagan, I have reviewed the process in all areas, including the coal area. We did not wait for the Linowes report to look at the coal management program. My views are pretty well expressed in the report that we sent up to you.

Moreover, I think it is a new process. I certainly give a great amount of credit to your Coal Commission for those ideas.

Senator FORD. Let me then tack on (a) or (b) to that. Do you think the changes then, if you don't want to sit in judgment; do you think the changes Secretary Watt made have been successful in producing the kind of streamlined program which he apparently had in mind?

Secretary CLARK. I don't know, Senator. As I mentioned, when I arrived in my new job the end of November, I was met by a moratorium on the whole process. So I felt that I should start from zero with staff. Knowing the Linowes Commission report and the OTA report were expected, I asked GAO to step back into the picture, which they have done. In fact, I believe we entered into the first Memorandum of Understanding in the history of the Department of the Interior, with GAO. As we proceed to arrive at the best possible process, I hope we will avoid historic mistakes going back to, I guess, the first moratorum on coal leasing in 1906.

So, this issue has a long history, and one that should concern us as we look to the future.

Senator FORD. Is there an opportunity for us to obtain a copy of your proposed procedures?

Secretary CLARK. Yes, Senator. Of course, it contained the essence contained in our response to the Linowes report, which came up here on March 19. The next step would be, of course, to refine that implementation in consultation with the committee and anyone else who wishes to speak to it.

Senator FORD. Thank you, Mr. Chairman.

The CHAIRMAN. Senator Melcher?

Senator MELCHER. Thank you, Mr. Chairman.

Mr. Secretary, you have just stated that when you got on board you found a moratorium in place and that you're starting from—did you say from ground zero?

Secretary CLARK. Oh, some metaphor, square one, ground zero.

Senator MELCHER. They're all appropriate, and I'm pleased that you say that because I think that however valuable it is to have the Linowes Commission report, there are still some basic questions in that report that are going to have to be sorted out, evaluated, and judged, and it's going to take some time.

And I assume that you will be talking to members of this committee as well as to other people who have been grappling with this problem for, say, the last 15 years, or dozen years anyway. Is that correct?

Secretary CLARK. Yes, Senator. You and I began that process even before my confirmation hearing as it relates to the railroad holdings—the so-called checker-boarding problems. I assure you I will continue these conversations at any time.

Senator MELCHER. Well, I'm sure you will, and I'm pleased that you will.

Let's get to point two. The so-called captive tracts, or isolated tracts, that only one company can uses presents an immediate problem. It's a problem that you can't avoid even during the moratorium, I assume. Isn't that correct? Even though there's a moratorium, you're going to have to be able to release enough coal so that existing operations can continue to operate. Isn't that correct?

Secretary CLARK. Yes, in the maintenance/emergency areas.

Senator MELCHER. Whatever you want to call it, maintenance/emergency. But many of those are actually captives, aren't they? They can only be used by one company.

Secretary CLARK. Yes, Senator.

Senator MELCHER. Now that problem's before you, and even during the moratorium you have to establish what is, I guess under the law, fair market value. Isn't that true?

Secretary CLARK. Yes, Senator.

Senator MELCHER. Well, I certainly do not have the answer to what is fair market value in that relationship, because there's no competition.

I only suggest that somehow we're going to have to arrive at a minimum. The royalty simply doesn't seem to be good enough to satisfy the public—and it is the public's coal. I get this feedback from people that deal with it in Montana. They don't think that the very low fee and the royalty gets much return for the coal. I don't know what the minimum should be, but I would encourage you to look at the possibilty of a minimum, and then relate that to fair market value.

Secretary CLARK. All right. As you know, the Commission did spend some time and a little consternation over the same problem, and the thought of looking at the neighbor tract and beyond. I understand the issue, and I have to concede that I don't have the full answer yet. I will be very pleased to continue to receive your own thoughts on these tracts.

Senator MELCHER. I think this is one of the real tough points. I suspect that there are very few absolute needs to life for the moratorum. But these captive tracts for an ongoing operation—whether we call them maintenance, emergency, or bypass coal or any of those terms—have to be released because we don't want to shut down those operations. I think the law is good enough on this to give you needed direction, but it also means you have to establish a value and collect it.

Now, there's one other point, Mr. Secretary, to which I'd like to have your response on.

On the 10-year lease, when the mining plan has not been approved, and there's no opportunity to actually mine the coal. I see that one of the recommendations or points you're grappling with is perhaps to allow the lessee to stay a 10-year extension with some up-front payments on the royalty that would be collected if it were mined. Before it is mined. In other words, it's probably not going to be mined for 2 or 3 years, so they advance royalties as if it were actually being mined.

I don't know that that solves any problem, but what is your current thinking?

Secretary CLARK. Senator Melcher, I agree with the observations of the Linowes Commission. We have a maxim in the law, as I cited earlier, that the law abhors a default. I think there's a certain injustice about the abrupt ending, without considering extenuating circumstances on the part of the lessee. On the other hand, any owner-manager of the property looks for diligence on the part of the lessee or the buyer, and we want to maintain that. However, I think there should be a middle approach in some way to allow the lessee to explain the circumstances, to pay additional fees in some

way or another, and to avoid the abruptness. I do not think such termination in our national interest. It could chill the competitiveness that must prevail in the marketplace. So, I think that we have to find some other arrangement, still avoiding the speculation that took place in the 1960's that allowed any person or corporation to amass great assets or acreage on the one hand, but if the deal is on the other hand legitimate, I think there ought to be flexibility in that 10-year diligence requirement.

Senator MELCHER. Well then, you're looking at something like an advance payment as proving diligence?

Secretary CLARK. Yes, Senator, and not unlike the royalty advance rental. I think we can do it in many ways, such as an exchange of property, if there is some impediment in the first parcel. Again, it comes under the heading of flexibility that I think any landlord should have.

Senator MELCHER. Will the advance payment suffice under the current diligence provision of the law?

Secretary CLARK. Do you mean a continuation of the advance payment?

Senator MELCHER. Yes.

Secretary CLARK. I don't know.

Senator MELCHER. I mean similar to what we were just discussing. That is, advance payments on royalties as if the coal were actually being mined even though it hadn't been mined.

Secretary CLARK. A continuation at the same rate? I don't know whether that would suffice to maintain the diligence that we think should be maintained. I'd like your views on that at some point.

Senator MELCHER. Well, what I'm trying to sort out in my own mind is whether the law on diligence and the 10-year lease requirement is of a nature that will permit you as Secretary to accept something—I think it's discussed here in the Linowes Commission report and your comments on it—like being one of the possibilities of advance payment of royalties even though the coal isn't actually being mined and won't be mined until several mining plans have been approved or something else has been set in motion so that they can actually get into mining.

I'm just wondering whether the law permits that to satisfy the diligence requirement on leases?

Secretary CLARK. And then allow the Secretary to go beyond the 10 years?

Senator MELCHER. Yes.

Secretary CLARK. I doubt that the Secretary has that discretion under existing law. I would have to ask the Solicitor on that point.

Senator MELCHER. Well, these problems are not solved that easily, and I'm not expecting you to be able to respond here with assurance what is permitted under the law and what can be done.

But again, if the law is not adequate on this means I would be interested in discussing what ever you think would be in the public interest in order to protect the public interest where, obviously, the diligence clause cannot be satisfied by actual mining.

And I think there are instances, I don't have any one specific one in mind, but I think there are several instances where it just isn't going to happen; though they have attempted to develop diligently,

they couldn't really start the mining process during that 10-year period.

Now lastly, the other side of this—and this has bothered me for years.

What about these old leases, are we going to have to go through and add another 10 years on those leases that were executed prior to the 1976 when we amended the Coal Leasing Act? And are they going to get by another 10 years before they're actually covered by the provisions of that Coal Leasing Act? I hope not. I hope the law was clear enough that after this 10 years—and it'll be 10 years in 1986—that all those pre 1976 leases do come under the requirements of the 1976 act.

[The information follows:]

As to the diligent development requirements for leases issued in the 1950's and 1960's, it is our position that when these leases reach their 20th year, BLM will readjust them to conform their terms to the diligent development and royalty provisions of the 1976 Amendments. The Department's rules, promulgated in 1982, repealed possibly unenforceable prior rules that said leases of this kind must all be in production by 1986, and established the date of readjustment as the time to begin the 10-year development clock set in the 1976 Amendments. Currently, we are defending lessees' court challenges to the BLM's imposition of the royalty rates of the 1976 Amendments to leases upon readjustment.

Senator MELCHER. All right. Thank you very much, Mr. Secretary.

The CHAIRMAN. Mr. Secretary, thank you. I have just a couple of questions.

I wonder if you could provide for the record, updated figures on volumes of coal under lease, and, separately, state the volumes that are economically recoverable that are under lease, and, finally, the volumes—to the extent that the Department has the information—the volumes that are committed to long-term contracts?

Secretary CLARK. Yes, Senator. We will provide that information to you.

[The information follows:]

THE SECRETARY OF THE INTERIOR
WASHINGTON

May 30, 1984

Honorable James McClure
Chairman, Committee on Energy and
Natural Resources
United States Senate
Washington, D. C. 20510

Dear Mr. Chairman:

During the Senate Energy and Natural Resources hearing on April 5, 1984, you asked that I provide up-dated figures on volumes of coal under lease, volumes that are economically recoverable, as well as an estimate of volumes committed to long-term contracts.

In my March 19, 1984, report to Congress responding to the Linowes Commission's report I committed the Department to thoroughly reevaluate the status, including the development potential, of the outstanding Federal coal leases and applications. The future of coal production and lease reversion to the government is very uncertain. My position towards future leasing is to view the issue from a regional perspective and respond to the dynamics of the market.

Currently, there are approximately 17.74 billion tons of recoverable Federal coal reserves under lease. The current long-term estimate is that by 1995, of these 17.74 billion tons of leased reserves, 8.0 billion tons will be committed to production, 5.0 to 6.0 billion tons have little or no development potential and will eventually be returned to the Federal Government because of diligent development requirements, and 2.4 to 3.4 billion tons will be available to compete for future contracts. Also the current estimate is that by 1995, of the estimated 6.8 billion tons contained in preference right lease application (PRLAs), 1.5 billion tons could be in production. The remaining 5.3 billion tons is expected not to be in production by 1995 and will be returned to the Federal Government. The estimated 8.0 billion tons of committed reserves, plus 2.4 to 3.4 billion tons of uncommitted reserves and 1.5 billion tons from PRLAs will put 12 to 13 billion tons of Federal coal under leases, either in production or available for production. These long-term estimates will be revised as markets change and additional information is gathered. Long-term estimates of this nature are only used for planning purposes.

I hope you will find this information useful. If you need further clarification, please let me know.

Sincerely,

William Clark

cc: Al Astrin

The CHAIRMAN. Finally, I understand that a little earlier Senator Ford asked a question with respect to the Linowes Commission report on 2(c).

If I remember, the Linowes Commission report indicated that they ought to be able to unitize in checker-bordered patterns, but they did not indicate—well, let me rephrase that. They also indicated that they thought 2(c) ought to be repealed, but that the unitized leasing recommendation did not apply to lands outside the checker-board pattern. Is that correct?

Secretary CLARK. That was not Senator Ford's question. But I think that the proposition you state is accurate.

The CHAIRMAN. All right. Thank you very much. And thank you, Mr. Secretary, for your appearance this morning.

I understand that we have already kept you beyond the time that you said you had to leave, and I apologize for that.

Secretary CLARK. Thank you, Mr. Chairman, I can take more time, if you wish, because we have cleared the schedule.

The CHAIRMAN. Thank you very much, Mr. Secretary.

Secretary CLARK. Thank you.

Senator FORD. Mr. Chairman, I want to congratulate the Secretary on being very good and astute in his answers. I'd like the record to reflect that he made no judgment on Secretary Watt's regulations. [Laughter.]

The CHAIRMAN. In spite of the fact that you tried.

Senator FORD. Yes.

The CHAIRMAN. We now have a panel of witnesses: Mr. Sheridan A. Glen, assistant vice president of Arch Mineral Corp. on behalf of the National Coal Association, the American Mining Congress, the Mining and Reclamation Council; Martin White, chairman of the Coal Committee of the Western Regional Council; and Brooks Yeager, Washington representative of the Sierra Club.

Gentlemen, your entire statements will be placed in the record in full. I would invite you to summarize as briefly as possible so that we can proceed directly to questions.

Mr. Glen, you lead off.

STATEMENT OF SHERIDAN A. GLEN, ASSISTANT VICE PRESIDENT, ARCH MINERAL CORP., ON BEHALF OF THE NATIONAL COAL ASSOCIATION, THE AMERICAN MINING CONGRESS, AND THE MINING AND RECLAMATION COUNCIL

Mr. GLEN. Thank you, sir.

You will notice today I'm representing all three of the major coal associations in town, which is unusual and reflective of the fact that we're almost monomaniacal in our intensity of trying to get the leasing program back on board again.

Our statement reflects today four principal things. I'd like to talk about a couple of them.

We, of course, participated in the whole Linowes Commission effort and found it to be a very rewarding experience, because when the Linowes Commission started, they didn't have a very deep or aggregate knowledge of the coal leasing business themselves and, as we went along and testified and as they heard testimony from other points of view, you could see a glimmer of recog-

nition. And I think their report is sound. The coal industry endorses most of what they have to recommend.

I think what is necessary is that we try to achieve the greatest degree of unanimity possible, not only speaking from the coal industry, but from the environmental community and the general citizenry as well, so that we can get a coal leasing program back on board.

Now, I would suggest that the coal industry believes that a more modest program is prudent at this point, because even if we were to endorse, Senator, a program of accelerated Federal coal leasing, you can see where the last one has gotten us. And to that extent, I think we're ready to endorse a modest program, a well-thought-out program, one that gets as much coal into the marketplace as is prudent.

So philosophically, we agree with most of the things that the Linowes Commission has to offer.

We also participated in the OTA study, which hasn't been totally completed yet, but is about completed. And while they find that the program is fundamentally sound and that the recent leasing that has taken place since 1982 will not cause substantial additional environmental harm than what it otherwise already would, we feel that their call for a more modest program has merit as well.

But the whole philosophy of leasing for reserves is really incongruous, I guess, we have to admit, with the fact that we have also only got 10 years to produce commercial quantities of coal or we lose the lease.

So we just simply under this set of legal constraints can't be leasing coal for the next 20, 30, 40 years. We have got to concentrate on that 10-year period.

Now, to the extent that we can show that it takes longer than 10 years to develop a coal lease in commercial quantities, which I think in some areas in the West it has, I think in those areas we ought to be allowed to take what additional time is necessary past the 10-year period, if we can prove that the markets are there, that it is an environmentally sound situation, and that 10 years is logical and necessary.

But, you know, you have got to admit that the coal industry in leasing coal puts its money where its mouth is. So if we say we need coal leasing, the argument of "there's a glut of leases now, why do you need additional coal leasing?" well, we're saying we're willing to put up substantial bonus money, we're willing to say we will take that 10-year risk, and if we don't make it within that 10 years we have to return the lease.

Now, I think that on my employer, Arch Mineral Corp., we have done so in the past; that is, we have taken the risk of leasing as much coal as we can and putting it into the marketplace. And, speaking for my own company, we would like to lease coal again as soon as possible.

There are areas in the West where there are markets for new coal leasing. Now, you have got to be shrewd and ingenious and competitive these days, but I think there are still market opportunities for new tracts of coal in specific areas in the West.

I, obviously, would not also let this opportunity pass by without saying a word about my favorite topic, and that's the forever-languishing preference-right lease applications.

I think you know and many people in this room know—that Arch is a big player in that game, and, so far, it has unfortunately just been a game and we have nothing to show for it other than 12 years of frustration.

I think that the coal leasing program should take into account the remaining 143—or whatever it is—preference-right lease applications, 15 of which are Arch Mineral Corp.'s, and guide the new Coal Leasing Program accordingly, so that those leases are taken into account.

Now, I think I have expressed very clearly on a number of times to this committee and others what our market intentions are for that coal and why we feel that we deserve to have a lease so that we can show you.

There are others of those preference-right lease applications that probably will never come to fruition and the companies don't really particularly want them to.

But that whole system has to be integrated into the new Coal Leasing Program before you can start leasing new tracts again, in my estimation.

So that's No. 1; the coal industry needs continuing access. We want to continue with a coal leasing program.

Quite frequently, as recently as breakfast this morning, I was asked to account for this magical 18 billion tons of coal that are supposedly on the market. I think I can do that.

First of all, half of it is represented in logical mining units that are already under contracts, or hopeful extensions of existing contracts, or extensions of logical mining units of existing producing mines.

Some of it is under the control of my employer. We're not going to mine it for a while, but it's under an existing logical mining unit.

I think some of that 18 billion tons is environmentally unsound and it will probably never be mined.

I think some of it is wishful thinking; companies that are continuing to hold onto it, hoping that a specific market area, a new powerplant or whatever will open up in the area that they have those leases.

But nobody but nobody, and I can assure you I know what I'm talking about, is holding back pre-1976 leases waiting for the price of coal to go up.

The price of coal in northern Wyoming right now is about what it was 10 years ago, although it did take a rise in the intermediate time.

The price of coal in the other parts of the West has risen dramatically in terms of its own specific supply and demand.

Let me talk briefly about section 3. You know the intensity with which we want to get section 3 repeal taken care of.

I was reviewing the transcripts of some of the hearings held in 1976 the other day with Senator Metcalf and Congressman Minnick, and I think I've got the answer to section 3, Senator. I think the problem we've got with section 3 is the lingering remnants of

the way that many people in Congress and many people in the general citizenry felt about the coal industry back then. It was a time of great conflict. The coal industry was fighting like crazy against the passage of the Surface Mining Act—which in retrospect was ill-advised. We were fighting like crazy against any type of additional regulations being passed to regulate Federal coal leasing. That, it turns out, was ill-advised.

And I think that the measure was punitive; it was punishment for the coal industry's behavior at that time.

This is 1984 now. The magical "drop dead" date of 1986 is rapidly coming upon us. I think section 3 is archaic, it's unusual, it's cruel, it's unnecessary, it's outrageous, and it ought to be repealed.

The CHAIRMAN. How do you feel about it? [Laughter.]

Mr. GLEN. Well, if I could be more candid.

I'd like to say for the record that I think, in my own opinion anyway, the industry has come a long way since then. I think we're more professional, we're more reasonable, we're more educated, we're better coal miners because we have integrated this whole cadre of professionals into the system. And I think the leadership is far better in the coal industry, both from an association standpoint and from the individual company standpoint than it was back in 1976.

It really is time to end this, and I hope that what we can do is get this philosophical atmosphere, this philosophical complexion of the coal industry changed so that they understand why we need to get that past.

If you will just review briefly pages 5——

The CHAIRMAN. Starts on page 4 and ends on page 6.

Mr. GLEN. Thank you. Pages 4 through 6. You know it better than I do.

You'll see that the section 3 type companies are heavily into coal leasing; they're into—well, it's basically listed there for you on page 5, and I'm sure you know it already.

Arch Mineral is owned by two oil companies that, if we were affected by section 3, would be prohibited from getting into the oil market on Federal lands.

Obviously, the pre-1976 undeveloped coal lease would pale in comparison to the efforts of a parent or an affiliate to be able to lease oil and gas elsewhere. So that's coal that would have to be put back into the marketplace.

I think we have come up with a reasonable solution which we have talked to members of the staff about, and that's the holding cost effort.

I would like to see that done this year. Others in the coal community say well, let's wait till next year, it'll be a better atmosphere, we won't have so much conflict and we'll get it done then.

The fact is, we can't really count on having it done in 1985 because, if it doesn't get done then, then we're at 1986 and we're in bad shape.

I guess what I'm trying to say with regard to that though, the image of the coal industry back then was "lease as much as you can, keep it as long as you can, and do the minimum amount of reclamation." And I think we have changed and I think we have proven that. I think we have put our money where our mouth is.

We have developed the necessary professionalism and we deserve to have section 3 repealed.

I also mention in my testimony section 2(c); a topic which you're well conversant on. And I would only hasten to say, as I've said many times before, that we don't mind, we are not afraid of, and we welcome competition in the coal industry. If a company wants to get into the coal business, we wish them well, although we don't always advise it. And that includes the railroads.

We just don't think they ought to be able to have a built-in advantage of leasing checkerboard coal along their own line; to have the ability to pay one royalty instead of two; to have the ability to set rates on an affiliate of which they own 100 percent of. I just don't think the controls are there.

I do think that the Union-Pacific, the Burlington-Northern, and the Santa Fe Southern-Pacific ought to be able to go to other basins and get into the energy business, as some of them have, and that we should welcome them into the coal community. RME, as you know, already produces a great deal of coal through affiliates and joint ventures. But I don't think they ought to have the built-in advantage, and that's why we have fought 2(c) repeal so vigorously. And it is about the only thing that the Linowes Commission came up with with which we have strong disagreement.

So I will end on that and just say that this is 1984. We have a lot on our agenda, and I'm pleased to be able to reflect some of our desires to you.

Thank you.

[The prepared statement of Mr. Glen and a subsequent letter from the American Mining Congress follows:]

STATEMENT OF

SHERIDAN A. GLEN

ASSISTANT VICE PRESIDENT

ARCH MINERAL CORPORATION

Mr. Chairman, I am Sheridan A. (Rusty) Glen, Assistant Vice President of Arch Mineral Corporation in St. Louis, and Vice Chairman of the National Coal Association's (NCA's) Leasing Committee. I am here today on behalf of both NCA and the American Mining Congress, who represent the major coal producing and coal sales companies of the Nation.

Let me thank you for providing us the opportunity to present our views on the report and recommendations of the Commission on Fair Market Value Policy for Federal Coal Leasing. We, like all other interested parties, have had an opportunity to make our views known before the Commission. Therefore, I will summarize our position on issues raised in that report that we believe are of critical importance. These issues are: (1) the underlying philosophy that should guide the federal coal leasing program; (2) the general thrust of the specific recommendations of the report; (3) the critical issue of repeal of Section 3 of the 1976 Coal Leasing Amendments Act; and (4) repeal of Section 2(c) of the 1920 Mineral Lands Leasing Act. I have attached to my statement our formal comments that were submitted to Secretary Clark on all of the Commission's recommendations.

I. The Underlying Philosophy of Federal Coal Leasing

In general, the industry endorses the stated intent and policy inherent in the Commission's recommendations on coal leasing levels. Thus, we agree that the government -- (1) should not use its unique ownership position in western coal to raise the price above the competitive market level -- (2) should ensure ample diversity in quantity and quality of federal coal offered for lease, and perhaps most importantly -- (3) should ensure predictability and stability in its coal leasing actions. We can little afford the on again - off again policies of the past.

The main thrust of the Commission's findings support what we in the coal industry have long maintained --- that the Federal Coal Management Program is fundamentally sound and that it should continue to make available ample amounts of coal to encourage

active competition among mining companies.

Because the federal government is by far the largest owner of western coal reserves, and because these reserves are the low-cost marginal source of supply, the government can, if it chooses, influence the price and pace at which these reserves are developed, as well as the competitive structure of the western coal industry. This in turn determines, in large part, the degree of competition in national coal markets and the price of U. S. coal, which in turn impacts the price of oil and gas.

We strongly believe that the government, as the clearly preeminent owner of western coal, should not attempt to restrict access to western reserves in order to create an artificial scarcity to achieve high bonus bids. This seems not only counter to national energy policy objectives, but is also counter to the revenue returns of the federal and state governments. Rather, the federal government, as is the case under the current policy, should ensure an uninterrupted supply of coal to meet the energy needs of consumers in the 1990s and beyond.

By following such a policy, the government not only maximizes competition among companies currently in the business, but also allows new entrants into the market, thereby maximizing competition to the benefit of the consumer of this western coal. The Commission clearly recognized this when they stated:

> ...Competition among a variety of potential suppliers will tend to drive down coal prices. The primary beneficiaries of such competitive forces should be coal consumers and electric power users who pay lower prices as a result.

Later they stated:

> The leasing policies of the Federal Government can greatly influence the degree of competition in western coal markets, because the Governments own so much of the coal. To some extent, the Federal Government holds the responsibility for the creation of a competitive coal market structure.

We believe such a policy not only maximizes competition among producers and minimizes coal prices but also minimizes the potential for a "sudden price shock," if in the future it turns out that an inadequate reserve base was under lease when the demand

37-071 O—84——8

for coal suddenly increased. We believe that had those who advocate a leasing moratorium prevailed in the late 1960s, when most of this coal was leased, the benefits of low cost western coal which we are enjoying today would not have been realized.

The Commission appeared concerned throughout their report about the risks associated with overleasing. However, in our view, there is a much greater risk associated with underleasing. The fact is that the perceptions of future coal demand at the time of actual lease sale can involve a significant margin of error. Overleasing tends to counteract this margin of error by assuring that there are adequate quantities of coal available in the future. As a result, the desire to meet future energy needs does not evidence less concern for the public interest as is implied by the Commission's concern with overleasing. Instead, the attempt to provide against insufficient quantities of coal in the future inures to the benefit of the public and reduces the risk of U. S. energy dependence on uncertain foreign sources in a time of need.

II. Thrust of the Commission's Specific Recommendations

It is highly encouraging that the Commission rejected the notion that a coal leasing moratorium is either necessary or desirable. However, we are concerned that many of the individual recommendations, if read together, may in fact create an unintended administrative moratorium. This is because the Commission focused so heavily on receiving "fair market value" as a strict condition for new leasing.

Mr. Chairman, we do not object to the notion that the government should seek to obtain "fair market value," or in the jargon of economists, the economic rent from the reserve in the form of the bonus bid. Many of the recommendations are aimed at doing just that. However, we should recognize two facts:

1) The major portion of the return to the government comes from royalties paid on tons of coal produced, not from bonus bids.

2) While "fair market value" may be theoretically understandable, in practice it can only be at best approximated prior to an actual sale, since each of the

parties will have its own subjective judgement of the eventual worth of a tract. Only after a sale is held, open to all on the same terms and conditions, can actual "fair market value" be known. What we are concerned with is that many of the Commission's recommendations, by trying to extract the last ounce of "fair market value," may in fact discourage companies from bidding in the first place.

For example, by endorsing the use of intertract bidding and negotiated sales both the Commission and the Interior Department believe that artificial stimulants can and should be used to ensure the receipt of high bonus bids, i.e. maximizing return. We believe they are not only impractical to administer, but also represent an improper attempt by the government to receive economic rents not properly attributed to certain tracts. In the area of negotiated sales, while we agree that they may be perfectly valid in certain circumstances, we believe the pressure on the government officials to receive "fair market value" may in fact lead to the coal being bypassed and the government receiving no returns. The Commission's recommendation on negotiated sales should not be construed as requiring a single bidder at a competitive sale to go to the bargaining table to negotiate a lease with the government. If a tract is put up for competitive bid and only one bid is received, that single bid should be recognized as fair market value and should not result automatically in further negotiation. However, where prior to the bidding it is determined to be unreasonable to expect more than one bid, the government should have the authority to negotiate a lease with the single interested party.

III. Repeal of Section 3

Section 3 says in essence that a company holding a pre-1976 federal coal lease that is not producing in commercial quantities on August 4, 1986 is barred from acquiring any further federal leases of coal, on-shore oil, gas, phosphate, etc. The Commission recognized that most of the companies that have provided the competition in federal mineral leasing activities are precisely those who have pre-'76 leases that will for a

variety of reasons, not be in production in 1986 and will therefore be locked out of the market. The Commission called for Section 3 repeal and we strongly support it.

We are encouraged that the Commission squarely recognized the imminent threat that Section 3 of the 1976 Coal Leasing Amendments Act poses to the orderly continuation of both the coal leasing program as well as the leasing of virtually all other on-shore federal minerals.

We believe that enforcement of the leasing prohibition contained in Section 3 runs counter to the intended policy of the Congress --- that being to assure maximum competition in future coal lease sales. Section 3 leaseholders are the key to maintaining effective competition in the sale of not only coal but also oil, gas, phosphate and other minerals leased under the authority of the Mineral Lands Leasing Act.

In 1982, the National Coal Association commissioned an independent study of Section 3 by a noted mineral economist, Harry Perry of Resources for the Future. I believe the results of the study as it analyzes the competitive leasing activities of companies affected by Section 3 are worth repeating:

- In coal sales conducted between January 1981 and October 1982, 20 of the 32 federal leases have been awarded to Section 3 companies.
- In oil and gas, they were active bidders in at least 20 of the 35 onshore oil and gas lease sales analyzed.
- They were the high bidders on 6 of 8 other sales involving copper, potash, phosphate, sodium and uranium.
- In oil shale, 7 of the 8 bidders capable of developing this resource were Section 3 holders.

Furthermore, Interior Department figures on expressions of interest in upcoming coal lease sales shows that "Section 3" companies make up the overwhelming competition for new production tracts.

Indeed, the Commission itself recognized that "the provisions of Section 3 may

prevent some companies -- including a company that could mine the tract most efficiently -- from bidding on future Federal coal lease sales, thereby reducing competition." The commission believes that some form of financial penalty may need to be employed. However, we find their use of a sliding scale prepaid advance production royalty for Section 3 to be wholly unacceptable.

As indicated in Table I, the advance royalty concept outlined by the Commission is in many ways more punitive than enforcement of Section 3. Not only will it force exactly what Section 3 repeal is intended to halt - either the premature forfeiture of coal leases or a bar on coal companies from participating in future sales - but it will drastically reduce the economic value and hence the likelihood of developing pre-'76 leases. This runs directly counter to the government's objective of having a maximum amount of coal under lease to maximize competition.

Mr. Chairman, we believe legislative repeal is the only real solution for curing the many problems created by Section 3 -- problems which can only increase as the 1986 deadline draws near and as those companies holding these leases are required to make harder and harder planning decisions.

Earlier this year hearings were held on legislation introduced by Senator Wallop, and many other members of this committee, which would repeal Section 3. Identical legislation has been introduced in the House. Section 3 is clearly the most imminent threat to an orderly federal minerals policy and we urge that Section 3 repeal legislation be afforded the earliest possible consideration.

IV. Repeal of Section 2(c)

Section 2(c) of the 1920 Mineral Lands Leasing Act prohibits a common carrier railroad from acquiring federal coal leases. It was intended to separate those who produce western coal from those whose job it is to transport it and in this regard, 2(c) has been a successful antitrust measure that has prevented the potential abuses when coal transportation and production are comingled. The Commission did not recommend repeal

of 2(c). However, it is the judgement of two commissioners that it be repealed. This is extremely troublesome and we believe warrants further comment.

Let me state at the outset that these particular comments represent the views of the members of the National Coal Association and the Mining and Reclamation Council only. The American Mining Congress has taken a position of neutrality on this issue.

The overriding theme throughout the Commission's deliberations was the enhancement of competition for federal coal leases. On the face of it, repeal of 2(c) would appear to enhance competition since it now prevents three western railroads from bidding on federal coal leases, combining them with their "checkerboard" holdings, and hence increasing the number of participants in the western coal market. We believe repeal of Section 2(c) runs exactly counter to this goal and will ultimately destroy rather than enhance, competition in future federal coal lease sales.

A closer examination of the argument illustrates its inherent flaws.

Our opposition to the repeal of Section 2(c) has been and remains predicated on two fundamental principles. First, and most important, three western railroads have a virtual monopoly over the transportation of western coal. Second, the vast "checkerboard" ownership of coal by these railroads within their respective transportation markets grants them a unique bidding advantage when competing against independent producers. This is because even if an independent producer were to win the lease, he is at the mercy of the railroad, who owns the adjoining sections, to form a logical mining unit. Since he has his money at stake and is facing a 10-year diligent development clock, the independent operator would be foolish to bid. Commissioners Linowes and Walsh address this concern by requiring the railroad or its affiliate to release its exploration data on its own coal holdings within the tract under consideration, and agree to lease its coal on the same terms as the government coal. However, it completely ignores the railroads' dominance over the movement of western coal and the freedoms granted under the Staggers Rail Act and subsequent ICC actions eroding the captive shipper protections.

TABLE I

Example of Holding Cost Under Coal Commission Advance Royalty Concept*

Assume

Average 1983 Selling Price for Wyoming Coal - $12.75/ton

Federal Royalty of 12.5%

Year	Advance Royalty as a percentage of assumed production	Reserve Base/Production Necessary to meet percentage requirement			Holding Cost** (millions)		
		100 mt	150 mt	200 mt	100 mt	150 mt	200 mt
11	1/2%	500,000	750,000	1 mt	796,875	1.19	1.59
12	1%	1 mt	1.5 mt	2 mt	1.59	2.39	3.18
13	1 1/2%	1.5 mt	2.25 mt	3 mt	2.38	3.58	4.77
14	2%	2 mt	3 mt	4 mt	3.18	4.78	6.37
15	2 1/2%	2.5 mt	3.75 mt	5 mt	3.98	5.97	7.96
16-20	2 1/2%	2.5 mt	3.75 mt	5 mt	19.9	29.8	39.8
					31.83	47.71	63.67

* The commission developed an advance royalty concept by selecting a production schedule, identifying an appropriate price, and paying an advance royalty as though production under this concept were met.

** Dollar amount required per year to hold lease and avoid Section 3 prohibition against further leasing.

To illustrate the railroads' complete dominance over the movement of western coal we compiled ICC Class I railroad freight figures for calendar 1981 and 1982. We believe the figures which follow below illustrate, rather dramatically, the monopoly position which the four major western railroads hold over the movement of coal.

Year	Western District Coal Movements	BN, UP, Santa Fe, D & RG Movements	Percent of Total
1981	185,304,945 tons	158,426,305 tons	85
1982	187,001,001 tons	159,155,120 tons	85

Fortunately, the Commission as a whole recognized the monopoly power of the three western railroads over coal transportation and accordingly recommended that Congress review the protections afforded captive shippers.

Only the protection of federal law as set forth in Section 2(c) and a fairly interpreted and enforced Interstate Commerce Act prevent the railroads from exercising their unique federally granted position to the complete detriment of non-railroad producers.

In conclusion, Mr. Chairman, we believe that implementation of many of the Commission's recommendations will go a long way toward restoring public confidence in the federal coal leasing program.

What must be remembered throughout your consideration is the important role federal coal plays in providing low-cost energy to utility consumers throughout the nation.

Again, on behalf of NCA, AMC and MARC, I thank you for your time today. I'd be happy to answer any questions.

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* Immediate Past Chairman
* Honorary

April 6, 1984

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The Honorable James A. McClure
Chairman
Committee on Energy and
Natural Resources
United State Senate
Washington, D.C. 20510

Dear Mr. Chairman:

On April 5, the Committee on Energy and Natural Resources continued its oversight hearings on the final report of the Linowes Commission on Fair Market Value Policy for Federal Coal Leasing. At that time, testimony was presented on behalf of the American Mining Congress as well as the National Coal Association and the Mining and Reclamation Council of America by Sheridan A. "Rusty" Glen, Assistant Vice President, Arch Mineral Corporation.

Mr. Glen submitted a written statement for the record and summarized that statement in his oral remarks. One of the issues raised in both the written and oral statements was the repeal of section 2(c) of the Mineral Lands Leasing Act of 1920. Mr. Glen's oral remarks were not prefaced with an explanation of the position of the three associations on repeal of section 2(c). However, the written statement contains a clear proviso that, unlike NCA and MARC (who are opposed to repeal of section 2(c)), AMC has taken a position of neutrality on the issue.

Given the significance of this issue to both the industry and your Committee, we respectfully request that a copy of this letter be placed in the record of the hearing so as to clarify any ambiguity between Mr. Glen's oral statement and the joint AMC/NCA/MARC written submission on the issue of repeal of section 2(c).

Once again, thank you for the opportunity to present our views to you and your Committee on the Linowes Commission report.

Sincerely,

J. Allen Overton, Jr.
President

The CHAIRMAN. Thank you very much.
Mr. White.

STATEMENT OF MARTIN A. WHITE, PRESIDENT, WESTERN ENERGY CO., AND CHAIRMAN, COAL AD HOC COMMITTEE, WESTERN REGIONAL COUNCIL

Mr. WHITE. Thank you very much, Mr. Chairman.

My name is Martin White. I'm president of Western Energy Co., a Montana-based coal mining company with properties in Montana, Wyoming, and Texas. I'm also chairman of the Western Regional Council Coal Ad Hoc Committee. And that council represents the eight Rocky Mountain States where most of the coal we're talking about resides.

I have submitted a statement, and I apologize, Mr. Chairman, but I see that since I started this way and the typing occurred there's a couple of typos that change the meaning of the sentence, and I'd like to request that I submit some pages to correct that, if I may.

The CHAIRMAN. Certainly.

Mr. WHITE. I just have a few comments to add to what has already been said. It seems like most of these issues have been covered pretty well today.

The Arab oil embargo is what really seemed to place a lot of emphasis on coal, and there were people that thought they were going to get rich in the coal business. So a lot of people rushed into it. And it seemed like from 1973 through 1975, there was a lot of interest.

But when the people got in there, they found out it's a hard, dirty, tough business, and there's not a lot of money to be made in the coal business, and the speculators quickly got out of it.

One thing I think that's important for the committee to look at is the rate of return on equity in the publicly held coal companies in America, because it's declined. In 1981, it was about 7.8 percent, and that's not a very healthy industry. And I'm always surprised at everybody that wants to take some more money out of that industry, and assume that it's because they think that the coal companies can pass that through to their customers on what's called pass-through clauses. But in actuality, they work until you reach the market, and then the utility goes and buys it from somebody else. So I think that we have to keep in perspective that the coal business is not a glamour business where they have tremendous profits.

However, I agree with what Secretary Clark said, and what I believe the Linowes Commission have reached in a conclusion, that the coal industry is a very important industry to America, and if we have some other interruption to our supply of energy—and I believe we still import some 60 percent of our energy, if we have some interruption in that supply of energy, again the emphasis is going to be on coal to pick up the slack.

So I think it's important that we keep a smoothly operating, healthy coal industry in America.

The other thing I would say about the coal industry is that it's probably one of the most regulated in America. And when it comes

down to diligence, I think it's important to know that from the time a coal company acquires a lease, searches out and finds a potential customer, permits the property and gets it into production, they are really moving if they can get it done in 10 years. That is an exceptional time period.

And I know in our case, for instance, we applied for some leases, and just hiking through the Government process, 12 years have passed since we applied for leases from the Federal Government and they still aren't ours, and they sit in the middle of our operating property. So 10 years is really not a very realistic timeframe.

Our statement has taken every point in the Linowes Commission report and addressed it item by item. We have also addressed Secretary Clark's response to that report, and I'm not going to go through each one of those items. I will just mention those that are important to us.

We agree that the report was a well-done report, and appreciated our participation, or our opportunity to participate in that process.

But we think that it is very important that there be some smoothly operating leasing program that's predictable, and we hope that the recommendations as they would be considered and possibly implemented would always have that as an objective.

Secretary Clark said that he agreed with most of the items in the Linowes Commission report. And I hope he meant that, because as we read his response, there's one item that he did not agree with; and that was, changing the method of calculating Federal royalty. And Federal royalty now is a percentage royalty that applies against other percentage taxes on coal, percentage severence tax and other such percentages.

I don't think Congress expected to reap a harvest of gain from that artificial interaction of those, the percentage royalty and the percentage taxes.

The Linowes Commission recommended removing the percentage State and local severence taxes from the calculation of the royalty.

Now, we had originally taken the position that you should also remove the percentage black lung tax and the percentage royalty itself from that calculation and the percentage taxes.

We would hope at least that they would accept the Linowes Commission recommendation there, which Secretary Clark's assessment at least has left that out.

We agree with what's been said about the repeal of section 3.

And I think that with that I would stop, Mr. Chairman. Thank you.

[The prepared statement of Mr. White follows:]

STATEMENT
OF
MARTIN A. WHITE
CHAIRMAN
COAL AD HOC COMMITTEE
WESTERN REGIONAL COUNCIL

Mr. Chairman and Members of the Committee:

The Western Regional Council appreciates the opportunity to testify on the federal coal program. I am Martin A. White, President of Western Energy Company, a Montana based coal mining company with properties in Montana, Wyoming and Texas. Western Energy's Rosebud Mine at Colstrip, Montana, has been one of the ten largest coal mines for many years. In 1983 the Rosebud mine produced 9.6 million tons.

I am here today as Chairman of the Coal ad hoc Committee of the Western Regional Council to present testimony relative to the Linowes Commission Report and the Department of Interior s response to that report.

The Western Regional Council is an organization of the Chief Executive Officers of 47 companies active in the eight Rocky Mountain States. It represents diverse business interests, including major financial, utility, energy, mining, manufacturing, construction and other industrial enterprises. Recognizing the need for a healthy and active economy and a clean and safe environment, the Western Regional Council's objective is to recommend national, state and local government policies which enhance the quality of life for citizens of the Intermountain region. The issues discussed by the Linowes Commission Report and the Department of Interior's response are particularly important to our group in the eight Rocky Mountain states because most of the federal coal is found in our region.

BACKGROUND - COAL INDUSTRY

In 1973, at the time of the Arab oil embargo, increased attention was turned to coal as an energy source to help solve the energy independence challenge. The coal industry acted in good faith and supported national goals by adding more than 200 million tons of mining capacity. However, by 1982, ~~productive capacity~~ dropped to 52 percent, compared to 65 percent in the copper industry and 48 percent in steel. That desperate situation is reflected in coal's return on equity, which plunged to a low of 7.8 percent in 1981. The coal industry is facing serious economic challenges.

At the same time, we have fallen short of our goal of energy independence. To work towards that goal and to be prepared for the next crisis, we must have an existing, smoothly operating, health coal industry. Leasing moratoriums, changing regulations, unduly restrictive requirements, and depressed economic conditions all frustrate that objective.

The coal industry is among the most regulated in America. Consequently, planning and preparing for new production requires long lead times -- up to 10-15 years. Government must do a better job of planning and administering federal leases to control costs and remove unnecessary obstacles that hamper the industry's efforts to meet national goals.

With that background, we believe that the Congress must allow the federal coal leasing program to continue and the government to lease more of its coal. In determining the levels of coal to lease, we ask that you consider the following:

-- Approximately 87 percent of the federal coal resources are currently withheld from leasing or development at a time when thre are legitimate, competitive private interests willing to develop them.

-- It is important to recognize that demographic shifts in the West will change regional coal demands and will require the increased availability of Federal coal to meet those demands.

-- As utilities switch to using more coal, competitive pricing cannot be achieved if the government holds off the market ~~52~~ 87 percent of the available reserves in the Western United States.

We feel it is extremely important to think of these factors as you consider the federal coal program. The program must be sensitive to the fact that the coal industry is not healthy. It must be sensitive to the fact that in the Western United States the government owns 60 percent of the coal and has only leased 8 percent. It must be sensitive that, ultimately, coal companies cannot pass on increases in their costs. Adding costs on producers eventually pushes them above market prices and out of business. The existence of pass through clauses in some coal contracts does not justify unreasonable costs to acquire and produce federal coal. We ask you to consider these facts, principles and concepts as you review the coal leasing program.

COMMISSION REPORT - DEPARTMENT RESPONSE

The WRC has carefully reviewed both the recommendations of the Commission on Fair Market Value Policy for Federal Coal Leasing (Linowes Commission) issued in February, 1984 and the Department of Interior review of those recommendations, known as the Review of Federal Coal Leasing, dated March 19, 1984. We appreciate this opportunity to provide our comments and concerns on some of the Commission's recommendations and the Department's response.

Federal Coal Leasing Levels

Rec. III-5 -- "The quantity of coal leased should be determined so that the government will receive a fair return, consistent with the achievement of other public policy objectives such as promoting efficient land use and environmental planning and conserving appropriate amounts of coal for the future."

The WRC agrees with the Commission's Rec. III-5 that the government should "receive a fair return" for its coal leases, as long as that recommendation is interpreted consistent with the Department's response (p. 11) emphasizing the Commission's deliberate use of the term "fair return" rather than "fair market value". The Commission's recommendation recognizes that other important factors must affect the quantity of coal leased. The recommendation expressly lists such "public policy objectives" as efficient land use, environmental planning, and conserving coal for the future. Other equally important objectives are listed in the Commission's conclusion prior to its recommendation (pp. 127-8), including "providing coal to consumers at low prices", "furthering national security through greater energy independence" (including preserving a healthy coal industry base), "treating residents of coal-producing areas fairly" (such as in many coal-producing areas in the West currently suffering from low capacity utilization and high unemployment), "and other goals". The WRC strongly supports the Commission's conclusion recognizing the importance of these factors in determining the appropriate levels of federal coal leasing.

Selecting Tracts for Coal Leasing

Rec. IV-1 -- "Tracts should be selected in such a manner that their characteristics will enhance the attainment of fair market value."

While the WRC recognizes the need to "enhance the attainment of fair market value" in tract selection, we believe other factors, such as those expressly recognized by the Commission in its Rec. III-5 and related conclusion and discussion ("providing coal to consumers at low prices", "furthering national security through greater energy independence", "treating residents of coal producing areas fairly", etc.) must also be considered in the tract delineation process. In addition, every effort should be made to accommodate existing operations and avoid bypass situations in the tract delineation process.

Rec. IV-2 -- "The Interior Department should sponsor more drilling for use in tract delineation and it should encourage cooperative drilling in which any additional firms could participate by paying a pro-rated charge."

The WRC generally agrees with the premise that improved coal resource information would improve the accuracy of tract delineation and fair market value-related appraisal work and encourage interest in potentially competitive new production lease tracts. However, we confirm the Department's concern that the changes proposed by the Commission in this recommendation "would reduce the incentive for companies to conduct exploratory drilling, thus reducing the amount of coal data submitted by industry to the government. It would benefit those companies that let others take the risk of exploratory drilling while penalizing those that are willing to take this risk."

WRC member companies generally prefer to do their own exploratory drilling and keep such information confidential. The WRC believes the current Department regulations in 43 CFR 3410.2-1(c) are adequate. We concur in the Commission statement that, under these regulations, the "Department has thus been successful in encouraging the dissemination of coal data to a large number of possible bidders through its exploration licensing arrangements". (p. 181)

Coal Lease Sale Procedures

Rec. V-1 -- "The government should have leasing policies that distinguish between new production tracts on the one hand and maintenance and bypass tracts on the other."

The WRC agrees with the Commission's recommendation that government leasing policy should distinguish between new production tracts, and maintenance and bypass tracts. Each federal coal management program that the government has designed over the years has incorporated flexibility to provide

for emergency, bypass or maintenance leasing. This is an important recognition by the government of its responsibility to see that coal is developed in an orderly and timely manner and that existing operations are not closed due to lack of reserves or unforeseen circumstances which preclude mining of a portion of a tract that had been believed to be available for production. It is obviously in the public interest to see that coal is not bypassed because of administrative action or inaction.

The Western Regional Council is pleased to see some changes reflected in the July 30, 1982 regulations in 43 CFR Subpart 3425 eliminating from Section 3425.1.4 the two-year production requirement for mining operations prior to applying for an emergency lease, and allowing more than one emergency lease at a time for the same mining operation. These changes will work to enhance efficient mining with a minimum of disturbance.

There continues to be other areas in regard to emergency leasing where the WRC strongly encourages changes. These include (1) a set time frame for approval or denial of an emergency lease application, (2) elimination of the eight years of recoverable reserves limitation on the size of an emergency lease, (3) determination of fair market value, and (4) flexibility to permit an award of an emergency lease under certain circumstances without competitive bidding.

1. Timing -- There needs to be a realization by the Department of the synergistic nature of an emergency lease issue to prevent the bypass of federal coal. The government benefits as coal owner as much as does the coal producer. The definition of bypass coal as contained in 43 CFR 3400.0-5(d) is "an isolated coal deposit that cannot, for the foreseeable future, be mined economically and in an environmentally sound manner either separately or as part of any mining operation other than that of the applicant for an emergency lease...."

Obtaining the rights to the federal coal can make mining easier and will provide additional reserves to the applicant. But it also prevents the loss of the resource and the need for additional disturbance.

WRC member companies have experienced long and unnecessary delays in the processing of emergency lease applications, delays of up to 15 and 17 months on one application. We have stressed before and do again that the timing for an emergency lease is extremely important. If the criteria for an emergency lease is met, there obviously is a need by the applicant to have a decision and to have expeditious treatment of the application in order to proceed with mine plans, pre-mining activities, and contractual obligations.

We recommend that the regulations governing bypass leasing be amended to require processing of emergency lease applications within 3 to 6 months. Such a short time frame will not work a hardship on the processing offices because there will never be many applications at one time. Also, since extensive environmental analysis will have been done to permit the original mining operation which would extract the bypass coal, 3 to 6 months is entirely realistic. A short processing time is especially necessary for surface mineable reserves if the federal coal is not to be lost.

2. Elimination of the 8 years of reserves limitation -- The WRC recommends the deletion of the limitation on the size of an emergency lease to 8 years of recoverable reserves. We recognize the intent of this limitation and would not want to encourage or permit an operator to rely solely upon emergency leasing provisions to obtain coal reserves and thereby avoid the leasing system. However, we also believe the limitation of 8 years of recoverable reserves is arbitrary and fails to permit the flexibility to address specific mine situations.

The 8-year lease limitation can require overly intensive development near the outcrop in drift mining operations. It can also unduly constrain the operating areas for an underground mine if the mine encounters adverse roof or rib conditions or unpredictable geologic features (faults, rolls, etc.). Where additional recoverable coal is available to be leased, the operator should not be forced by unnecessarily constrained lease boundaries to mine coal near the outcrop or in adverse mining conditions. Operators should be permitted a sufficient area in which to mine, especially where past experience indicates that various areas of coal in the applied-for lease area may be difficult to recover. If the Minerals Management Service, as reconstituted with the Bureau of Land Management, concurs that a lease area larger than 8 years of reserves at the applicable rates of production would be likely to improve mine safety, operating efficiency, or long-term coal recovery, the Bureau should be permitted to issue a lease appropriate to the needs of an applicant who otherwise meets the criteria for such a lease.

This proposal has been submitted previously and rejected because by the time the 8 years of reserves are exhausted, there should have been at lease one regional lease sale in which life-of-mine leasing would be contemplated. This comment addresses only annual production rates and does not recognize the requirements and limitations of mine design.

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It should be possible to meet the requirements of safety and efficient production for underground reserves with the government's opposition to using the emergency leasing procedures to lease life-of-mine reserves by setting different reserve limitations for underground and surface operations.

3. Determination of Fair Market Value -- The government has the responsibility to ensure that fair market value is received for all coal leases. Different approaches have been used to arrive at fair market value including discounted cash flow (DCF) analysis and comparable sales where they were available. This issue is of such great importance that, even before the Linowes Commission, the Department of the Interior empaneled a task force in 1979 to study the fair market value question and to report and recommend to the Secretary methods for arriving at fair market value and minimum acceptable bids on federal coal leases. Part of that report involved recommendations on what are known as small tracts which would normally include emergency leases. The 1979 fair market value task force determined that small tracts appear to have fair market values less than the following minimum acceptable bids.

$25 per acre and 12 1/2% royalty for surface coal
$25 per acre and 8% royalty for underground coal

This determination is based on the comparable lease data acquired for the April 1979 task force report and the data acquired for a dry run of comparable sales analysis techniques that summer. Only one fourth of DCF evaluations on small tracts on a stand alone basis yielded values greater than the minimum royalty and bonus. Evaluated as viable economic units of LMU's, taking into account the economies available to the applicant because of his other coal ownership, two-thirds yielded values greater than the minimum. However, the added return from one out of four small tracts is unlikely to repay the Department the costs of conducting the evaluation. Further, in many cases, economic theory would say that without bargaining or negotiating, which are excluded by law, small tracts are of zero value or just what the bidder will offer on the basis of goodwill.

It should also be noted that emergency leases usually result in more immediate payments to the federal government. Production royalties normally occur much sooner in time in emergency lease situations than in new production, stand alone type leases.

The Western Regional Council feels that there are other considerations surrounding the determination of fair market value in emergency lease situations. They involve existing operations which have existing contracts. The contracts vary

from company to company. They may or may not allow full pass through of the increased royalty costs of the new leases. The coal qualities are unique to the particular plant that is being served. In most cases, the coal that is being sought through emergency leases involves coal which was not economic at the time the mine opened. Usually, for surface mine operations, it is higher stripping ratio coal and, therefore, it is only economic to mine in conjunction with adjacent existing leases. The point is there are a number of variables which are unique to the particular operation involved complicating even the use of comparable sales.

We think it is possible to determine fair market value on the front end in emergency lease sales and we believe this information should be made available prior to the lease sale.

4. Flexibility in regard to competitive leasing of emergency tracts --- Although the regulations state that they are not intended and in theory do not encourage speculation, the fact is that the new regulations have removed the qualification of bidder requirements and require sealed competitive bidding.

While there may be occasions when two or more separate operations within the same vicinity may seek the same tract under emergency leasing, that circumstance will probably be the exception. We think there is definitely an opportunity for someone who wants to frustrate a competitor or to speculate on a tract to participate in sales. The acreages are usually small enough that the initial cost is not out of reach for these parties. If the applicant decides it is not in his best interest to deal with the third party, the public interest is clearly not served. We especially advocate that when an emergency lease tract is located within an established logical mining unit, the Department should have the option to deal directly with the potential lessee.

The Western Regional Council recomends that the government recognize that there will ordinarily be little competition in emergency lease sales but that the opportunity should remain available for interested parties to participate unless the tract is located within an existing LMU. We recommend that the Mineral Leasing Act be amended to provide for the awarding of leases by methods other than competitive bidding in emergency leasing when a tract is located within an LMU. Also, that the regulations then allow, in that particular situation, for the establishment of the fair market value through negotiations between the two parties, not unlike what happens in the private market place for leases. Another possibility would have a third party, an independent appraiser, establish the value in

working with the government and the prospective lessee. We do not recommend that there be any changes in the need for the applicant to meet certain criteria regarding need for the coal in question.

Rec. V-3 -- "Intertract bidding in appropriate cases is a desirable method for leasing federal coal."

We can see reasons to support the intent of introducing competition into the tract selection process. However, the WRC is unclear about how the concept of intertract bidding would operate in practice. We would be pleased to respond to more definitive suggestions. We can state that we cannot envision many situations where intertract bidding would be appropriate. In addition, we believe that maintenance and bypass tracts should never be offered in an intertract bidding situation. In summary, while it may not be a perfect process, the Regional Coal Teams should continue their tract selection responsibilities.

Rec. V-4 -- "To promote more competitive bidding, the government should test the feasibility of and experiment with a variety of auction techniques."

The WRC continues to believe that the proper method to lease federal coal is to publish a pre-sale minimum bid with opportunity for an oral auction. Such procedures will assure receipt of fair market value and guard against confiscatory collection of economic rent.

Rec. V-5 -- "Minimum submissible bids should be established on a regional basis. The minimum should be expressed as an amount per ton."

Coal is typically too diverse in a region to come to a meaningful cents per ton on a regional basis. While it may be acceptable to express the minimum submissible bid on a cents per ton basis, it should be done on a tract, rather than a regional, basis.

Rec. V-6 -- "Wherever possible, leases should be sold on a competitive basis. However, where reasonable efforts to obtain competitive bids have failed, the government should have authority to negotiate a fair price."

The WRC believes it is both appropriate and desirable for the Department to have authority to negotiate a fair price for a federal coal lease. However, such negotiations must be true "arms length" negotiations as in negotiations between a potential lessee and a private lessor. In such situations, the potential lessee should not be required to disclose all of its

relevant economic information and data to the Department prior to completion of the negotiating process. Similarly, after completion of negotiations, the Department should not be able to seek additional bids based upon the negotiations.

Rec. V-7 -- "The industry bids received on tracts in a lease sale on which there was extensive competition, along with the government's pre-sale appraisals, can constitute appropriate and important sources of information for post-bid acceptance and rejection decisions."

The WRC understands the need to use information from a coal lease sale along with the government's pre-sale appraisals in making decisions on bid acceptance or rejection. Improved information provided to potential bidders before the sale would also improve coal lease sale procedures and increase the likelihood that the sale will produce a more competitive bidding process and a greater return. Specifically, we believe that it is essential that potential bidders are provided, before the sale, with a published minimum bid which is a true indication of an acceptable bid level.

Determination of fair market value after bidding, taking into account the results of the bidding process itself, could be approximated on the front end of bidding. If a realistic minimum bid is published, a more competitive bidding process will result. A truly interested bidder is going to carefully consider how high he can go and still expect to recover a profit, and how high he must go in order to win the lease sale. A realistic minimum sets the stage for competitive bidding among sincerely interested parties that will begin with the minimum bid as a floor. The government would be assured that those bids received are acceptable to the public interest, thereby facilitating the post-bid acceptance and rejection decision-making process. In addition, bidders will know that if they are going to participate, they will have to enter the sale at least at a certain level and go beyond that if they want to win the lease sale.

Particularly in the case of bypass or emergency lease sales, fair market value should be able to be determined prior to the lease sale in much the same way as the post-sale procedures would in most cases. We can see no reasonable rationale for denying a bidder this information in advance. To do so creates the potential that coal will, in fact, be bypassed, maintenance operations shut down, and additional costs incurred needlessly while tracts are run through a subsequent lease sale.

We believe that publishing a realistic minimum bid before the sale will produce a more competitive bidding process with a greater return for the public interest, a better understanding

by potential bidders of the entry level at which a bid might begin to be competitive and, in turn, less opportunity for lease sale criticism.

Appraisal Methods

Rec. VI-4 -- "Where a federal tract is of use to only one party and no competition is expected, estimates of tract value should be based on the value of the tract to the adjoining mining or coal owner, rather than the "competitive" or "stand alone" value."

The valuation problem stems from the fact that many maintenance tracts are future bypass situations. Because a company wants and needs to mine as economically as possible and the government is charged with seeing that the public resource is preserved, neither is in a position of not being obligated to buy or sell.

Much attention has focused on the relative value of captive tracts. The uniform appraisal standards for federal land acquisitions reject the notion of enhancement of value due to the project, itself. Indeed, the U.S. Supreme Court commented on this issue at 337 US 333-4. This case involved the valuation of lands in a condemnation suit for the purposes of a railroad right-of-way. "It is not fair that the government be required to pay an enhanced price which its demand alone has created. That enhancement reflects elements of the value that was created by the urgency of its need for the article. It does not reflect what a 'willing buyer would pay in cash to a willing seller,' U.S. v. Miller, supra at (317 US 369), 374, in a fair market." Thus, as an example, the government would not pay an individual a premium for land to build a highway solely because the highway was located on that individual's land. Similarly, the government should not extract a ransom price for a maintenance tract simply because a mine exists.

Rec. VI-5 -- "Regulations should require lessees to report details of lease assignments."

As noted in the Commission's report, "The Department has authority to require confidential disclosure of the financial terms of Federal coal lease reassignments;..." We believe that the current regulatory requirement for disclosure is adequate and need not be expanded. We agree with the Commission that the Department is simply not making "full use" of current data from Federal coal lease reassignments and that it is neither necessary nor appropriate to go beycnd the current data requirements.

Rec. VI-6 -- "Industry representatives wishing to bid on federal leases should provide to appropriate federal government representatives information regarding prices and other terms of private coal transactions that may be needed for comparability analyses. The confidentiality of such information should be fully protected."

The WRC fully agrees with the Department's response that "implementation of this recommendation would be counter-productive" (p. 32). The Department correctly concluded that this requirement would inhibit competition because "some companies would rather not bid than disclose this information". The Department also correctly noted that significant differences between federal and private market transactions would diminish the value of such information. We agree with the Department's decision to continue its current policy of seeking "voluntary contributions of information regrading private transactions".

Key Statutory and Related Factors

Rec. VII-1 -- "For post-1976 leases the 10-year diligent development requirement should continue in place but it is recommended that Congress consider allowing a 10-year extension to be provided on advance royalties on an escalating basis. The escalation basis should be determined at a level designed to stimulate timely development."

The concept of diligently developing federal coal leases has been a stated purpose of the Federal Coal Leasing Program since the enactment of the Mineral Leasing Amendments Act of 1920. Until the passage of the Federal Coal Leasing Amendments Act of 1976 (FCLAA), payment of annual rentals met the Department of the Interior's diligence requirements. FCLAA mandates a 10-year diligence period for new leases and also precludes persons who have held an undeveloped coal lease for 10 years by 1986 from obtaining any further federal leases (coal or other mineral) under the Mineral Leasing Act.

The diligence and lease prohibition provisions of FCLAA were enacted as a result of Congress perceiving a problem of speculation with federal coal leases. The time has come to re-evaluate this perception. Since FCLAA passed, additional complex legislation dealing with coal mining, such as the Surface Mining Control and Reclamation Act of 1977, were adopted. This act and the resultant regulations are extremely complex and require an operator to expend a good deal of time and effort to meet those requirements. The baseline environmental studies and permit review often exceed three to four years to permit decision. Market considerations determine

when the environmental and permitting work begins. A slow market may delay this proces for an undetermined period. Other factors should be considered when examining the 10-year diligence period. The operator's coal customer also may experience delays in a project due to permitting or economic reasons.

The operator who is charged with meeting a diligence period can be placed in an untenable position. This fact has been recognized both by the Commission in its report and by the Department in its responses to that report.

The concept of diligent development has merit in that it serves to discourage speculation and restricts leasing to persons seriously contemplating operations. However, the Western Regional Council feels that the public interest can be served through diligence requirements without the harshness now required by law.

We recommend and encourage Congressional support for two specific changes in this regard, (1) permitting payment of advanced royalties in lieu of production in commercial quantities and (2) the repeal of Section 3 of the FCLAA.

1. Advance Royalties -- The Western Regional Council believes that the public interest would be best served by allowing non-producing lessees to pay advance royalties in lieu of production at the end of the 10-year diligence period if diligence has not otherwise been achieved. Such an economic incentive will serve as an adequate deterrent to speculation and will provide the government with greater assurances of development. Under most circumstances, the obligations under payment of advanced royalties would be substantial enough that a lessee would not be able to maintain the lease unless he would be able to anticipate actual production in the near future. However, it should not be so high that it would act as a penalty to those lessees who are diligently working to obtain production from the federal coal leases. The Department would perhaps be able to avoid a re-leasing process and would probably witness actual lease development more quickly than if a lease is cancelled and re-awarded to another party.

A lease would be subject as well to the ordinary adjustments which may be required upon lease renewal to reflect changes in law, regulation, and royalty rates. Especially at a time when coal markets are depressed and when new laws and environmental considerations have caused a stretch out in pre-mining activities and requirements, advance royalties in lieu of commercial operation makes eminent sense.

In considering the possibility of payment of advance royalties, questions have been raised about federal income tax treatment of escalating advance royalties. The Congress and the Department should examine how advance royalties would be treated for tax purposes.

In summary, the WRC recommends that legislation be drafted to amend the Coal Leasing Act to allow payment of advance royalties in lieu of production rather than restricting this privilege to operating companies as is presently done.

2. Section 3 Repeal -- Section 3 of the Federal Coal Leasing Amendments Act prohibits lessees from obtaining any further federal leases if by 1986 they have held an undeveloped coal lease for 10 years. This restriction is unnecessary. It may preclude a lessee from obtaining any sort of federal lease under the Mineral Leasing Act. If not changed, it will lead to extensive litigation. Section 3 is not needed since a diligence requirement, even one that allows payment in lieu of production, adequately deters speculation. The WRC recommends that Section 3 of the Federal Coal Leasing Amendments Act be deleted.

At a minimum in regard to Section 3, the Western Regional Council would advocate that such prohibition on acquisition of additional leases be restricted to federal coal leases rather than being applicable to all minerals leasable under the Mineral Leasing Act.

Rec. VII-2 -- "For pre-1976 leases the lessee should begin paying advance royalties at the time of the next lease re-adjustment, and on the same schedule as may be paid for post-1976 leases after 10 years from lease issuance period."

The WRC believes that on all leases (whether pre-1976 or post-1976 leases), the lessee may begin paying advance royalties at the end of the due diligence period, thereby allowing 10 more years in which to begin development of a federal coal lease. Advance royalties should be paid during this 10-year period beginning at the end of the due diligence period.

Rec. VII-4 -- "It is recommended that the Congress consider giving the Secretary of the Interior administrative discretion to reduce federal royalty rates for coal tracts prior to a lease sale, where current royalties would have adverse effects on production of the resource."

The WRC agrees with the Commission recommendation. We believe that the Secretary should have discretion to reduce federal royalty rates either prior to or after a lease sale. However, the procedures for exercising such discretion must be improved

over those currently employed for discretionary royalty reductions after lease sale. The current process is unduly burdensome with unreasonable delays in processing applications for royalty reductions, reductions granted for periods of time that are too short (e.g. one year) to justify the effort required for approval, etc. In addition, exercise of the Secretary's discretion to reduce royalties prior to the lease sale should look at a case on a tract specific basis rather than a regional basis.

Rec. VII-5 -- "The base for calculating federal royalty payments should be the F.O.B. price minus all state and local severance and similar taxes."

We are encouraged by the Commission's recognition of the need to alter the current method for calculating federal royalty payments. In its response, the Department deferred to Congress for action on this issue. We request that Congress carefully consider the following WRC position and views.

The Federal Coal Leasing Amendments Act of 1975 provided for a drastic change in the royalty structure for the production and sale of federally owned coal. All federal coal leases issued or renewed subsequent to that act "shall require payment of a royalty in such amount as the Secretary shall determine of not less than 12-1/2 percentum of the value of coal as defined by regulation..."

Production from federal leases which provide for the payment of the new percentage royalty is just beginning to occur. The new percentage royalty represents a quantum increase in the level of royalty costs. It is important that the increase in royalty costs due to the new percentage royalties be limited to the intent of Congress in establishing those new royalties.

The 12.5% royalty has long been the standard royalty in the oil and gas business. There is a vast difference, however, in the way royalty and severance taxes interact on an oil and gas price than the way these elements interact on a coal price. It is our understanding that on gas, for instance, there is a controlled wellhead price, say 1.75/MCF. The royalty is 12.5% of this amount. The State production tax is also a percentage applied against the same amount. The royalty and tax are then substracted from the wellhead price and the producers keep the remainder to cover cost reimbursement and profit. The price is not leveraged up by either the royalty or the tax or by an interaction between the royalty and the tax.

On coal, however, there is a different historical price structure which causes an interaction of the royalty and taxes that forces the price and the severance taxes upward. The following methodology shows the method of computation of a coal

price by using hypothetical costs and profit and actual tax rates for the State of Montana and federal tax rates at the rates effective in 1982.

Operating Cost Reimbursement & Profit	$6.32/Ton
Royalty	.15
Subtotal	6.47
Times State Production Taxes @ 35.12%	2.28
Subtotal	8.75
Plus Federal Reclamation Fee @ $.35/ton	.35
Subtotal	9.10
Times Federal Black Lung Tax @ 4%	.36
Coal Price Per Ton	$9.46/Ton

It should be noted that the vast majority of coal sold throughout the western U.S. is sold under long-term contracts which require the buyer to reimburse the seller for royalty costs and tax costs. If the royalty increases, that increase is further exacerbated because state and federal taxes apply to, and compound, the increase. If the royalty is a percentage that would interact with the percentage state and federal taxes, the percentages would compound the impact of each other, thereby artificially leveraging the price upward in an ever increasing spiral.

As listed below, the Interior Department has three options available for the application of percentage royalties. Despite comments by our organization and others, the Department chose the third option. The percentage could be applied:

1. against the non-tax, non-royalty portion of the price, i.e., the portion of the price the seller receives as cost reimbursement (except royalty) and profit; or

2. against the non-royalty portion of the price, i.e., all other elements of the price except the royalty and the tax consequences of the royalty; or

3. against the total price including a reapplication of the royalty itself.

Attachment #1 shows the impact of the new percentage royalty calculated by each of the three potential methods as compared to the present flat fee rate of $.15/ton. Attachment #1 is computed at the tax rates in effect in 1982. Method I results in a royalty of $.79/ton with an accompanying tax increase impact of .22 cents. Method II results in a royalty of $1.21/ton and an accompanying tax increase impact of $.36/ton due to the fact that taxes are included in the royalty calculation base. Method III results in a royalty of $1.40 per ton and an accompanying tax increase impact of $.43/ton due to

the fact the taxes are included in the royalty calculation base plus the royalty reapplies against itself in an iterative fashion.

It would seem unlikely Congress intended the economic rent due the government for federal coal to artificially inflate by allowing the percentage royalty to apply to and interact with federal and state excise taxes or by allowing a pure mathematical inflation of the royalty by having the royalty reapply against itself. It is our contention that Method I is the appropriate method of computing the percentage royalty and the method intended by Congress.

We have recommended that the Department of the Interior's regulations providing for gross value determination of royalties be amended to provide for this method of computation. In its response to the Commission's recommendation, the Department deferred resolution of this issue to Congress. The WRC recommends that Congress adopt the Commission's recommendation excluding taxes from the base for calculating federal royalty payments. In addition, the base for calculating federal royalties should also exclude the royalty, itself. The WRC believes the royalty should only apply to the non-tax, non-royalty portion of the price.

Attachment #1

Impact on Price
Percentage Royalty by Three Methods
vs.
Current Flat Fee Rate

Price Elements	Flat Fee $.15/Ton	12.5 Percentage Rate Method I	Method II	Method III
Op. Costs & Profit	$6.32	$6.32	$6.32	$6.32
Royalty	.15	.79	1.21	1.40
Contract Sales Price	6.47	7.11	7.53	7.72
State Prod. Taxes	2.28	2.50	2.64	2.71
Subtotal	8.79	9.61	10.17	10.43
Federal Reclamation Fee	.35	.35	.35	.35
Subtotal	9.10	9.96	10.52	10.78
Black Lung Tax	.36	.40	.42	.43
Total Price	$9.46	$10.36	$10.94	$11.21

The CHAIRMAN. Thank you very much, Mr. White.
Mr. Yeager.

STATEMENT OF BROOKS B. YEAGER, WASHINGTON REPRESENTATIVE, THE SIERRA CLUB

Mr. YEAGER. Thank you, Mr. Chairman.

I'm Brooks Yeager, representing the Sierra Club.

I should, before I start, like to mention that my written statement has been endorsed by the Audubon Society and the Natural Resources Defense Council as well.

I'm pleased to come here today to present our views on Secretary Clark's response to the Linowes Commission report and, more broadly, on his reponse to the most recent crisis in the Federal coal leasing program.

I'll try to be very brief in my remarks. It seems to me that the fundamental fact about this program is that it, once again, after getting off to a promising start after the last moratorium in 1979, the program is once again in paralysis.

And I think, despite Secretary Clark's understandable reticence in commenting on Secretary Watt's program, the reason for the paralysis of the coal leasing program is pretty clear to all observers; and that is that Secretary Watt tried to do too much; he tried to do it too fast; he exceeded the planning capacities of his own depart-

ment, and he created a regulatory structure that wasn't acceptable to people who had accepted the compromise regulatory structure and the compromise program that was erected with much effort under Secretary Andrus in 1979.

So I guess I should start out by saying that the Sierra Club does support an ongoing coal leasing program, but we don't support an ongoing coal leasing program of the kind that Secretary Watt had in mind.

And in fact, what we would support is a comprehensive effort to get back to the kind of concensus that characterized the 1979 program. We think it's possible to do that.

In my statement I have given a general outline of the kinds of steps that we think are necessary in order to do that.

And I will have to say that although we're very encouraged by two of the steps Secretary Clark has taken; No. 1, that he suspended the current four pending major western lease sales; and, No. 2, that in the context of his reply to the Linowes Commission, he has implicitly admitted that the program does need major alterations.

We still think that what's contained in this document is far too narrow in scope, far too cautious to come up with the kind of program that stands a chance of success both politically and economically.

Briefly, the kinds of steps that we would suggest to get back to a concensus coal leasing program are these:

No. 1. We think there needs to be comprehensive regulatory revisions. The Department needs to reestablish the environmental standards, the provisions for public participation, and the planning requirements which were discarded by Secretary Watt in his 1982 rewrite of the coal program. There ought to be a rational policy of basing coal production—pardon me--basing coal leasing on the estimated demand for production from the regional coal areas instead of on something that's impossible to define which is the industry's desire for reserves. The sales schedule for the pending and future sales should be stretched out, and projected lease offerings should be drastically reduced.

When Secretary Andrus inaugurated the coal program in 1979, he called for 1.6 billion tons of leasing over an 8-year period. In our view, both the Linowes Commission report and the OTA report show pretty clearly that that kind of leasing schedule is much more within the planning capacities of the Department and much more within the ability of the market to accommodate than the leasing schedules—the fantastic leasing schedules really that were proposed for the last 3 years.

We agree with Mr. Glen in saying that we think the Department should expedite its handling of the preference-right lease applications. But we wouldn't stop there. We think the Department has to improve its handling of the preference-right lease applications.

One of the reasons this game, as he called it, has gone on for 12 years is because the Department's efforts to handle these lease applications have been quite shabby for the whole time.

The environmental reviews that were accorded to large blocs of coal pending for lease under preference-right lease applications were simply so inadequate as to be ludicrous.

And although we agree that the PRLA should be handled early and that they should be determined fast and, in fact, before major new competitive leasing is held in regions where there are large blocs of PRLA's, we think that it has to be done with adequacy.

We think the four major currently planned western lease sales should be scrapped. We think they were planned badly, they've engendered enormous controversy, and we think they should be withdrawn and they should be replanned under the new provisions that are going to be put in place in response to both the Linowes Commission report and the Office of Technology Assessment's forthcoming report.

For a second I'd like to discuss Secretary Clark's response to the Linowes Commission report. And again, let me start out by saying that obviously we're encouraged that we finally have a Secretary of the Interior who's willing to respond to criticism and who's willing to look controversy in the face and attempt to deal forthrightly with a continuing problem within his Department.

On the other hand, I'd have to say that we believe that what's not in that document is more important than what is.

There are many encouraging steps that are taken in there in terms of Department procedures, Department organization, appraisal practices that were recommended by the Linowes Commission; but, in general, we believe that there are a number of weaknesses in that document that reflect omissions that are quite serious.

No. 1, the document offers no independent assessment of the lease sales held under Secretary Watt, and particularly the Powder River sale. We think that's important because we think the Powder River sale was not merely a result of individual misconduct. We think the Powder River sale revealed systemic inadequacies in the Department's coal leasing program that really ought to be addressed and cured before we go ahead with new major sales.

The document also contains no response to the clear criticism on the part of the Commission of the past excessive lease offerings on the part of the Department.

In fact, the Commission made a recommendation—although the Department maintains that they replied to all the Commission's recommendations, it sort of appears they have only replied to the ones that were underlined.

The Commission did make a recommendation, for instance, that between 2 and 4 billion tons should be leased in the next 2 years; accounting for any coal that was to be leased by virtue of preference right lease applications maturing.

The Department, nowhere in that document, replied to that and does not make any commitment to reduce lease offerings in the future in line with the Commission's criticisms.

We think it's unfortunate that the document avoids any comprehensive review of the current regulations of revisions which Senator Ford was alluding to. We think that those regulations, the 1982 regulatory revisions are a major course of the current abyss in which the program has fallen.

And without a careful look at what Secretary Watt did and the kinds of things that he eliminated from the recommendations, we

don't think the program is going to be able to succeed in moving forward.

I'd like to give one or two examples of the kinds of things that we hope that the Department will address, particularly in its reply to the Office of Technology Assessment's forthcoming report.

One of the items that Senator Evans brought up was the data adequacy that the Department—does the Department have enough information with which to lease coal, and at what point in the leasing process does the Department have to have adequate information in order to make reasonable decisions on leasing coal?

It's our position that the Department needs much better information much earlier in the process than it currently has it. And, in fact, we think that that kind of attempt, to get information early, to do adequate comprehensive planning, to base tract delineation only on the basis of adequate land-use planning was really a cornerstone of the 1979 program.

We were devastated to find that in Secretary Watt's regulatory revisions he eliminated all standards for data adequacy and planning; all standards you could, for instance, find out whether an updated management framework plan was a reasonable document with which to proceed, and most opportunities for the public to comment on the adequacy of data going into this lease-sale planning.

If the representatives of the coal industry wonder why it is that the public and public interest groups can't stomach an accelerated leasing program, I think we really need to look together at the kinds of regulatory changes that were made to allow the leasing program and attempt to go back and see what we can do to address some of the problems that have ensued.

I think that in response to a couple of the particular suggestions that have been brought up at the hearing and the Department's review again on preference right lease applications, we agree that they ought to be taken care of insofar as that's possible in an expedited way. And that the production, the estimated production from preference right lease applications ought to be taken into account in setting leasing levels, particularly for future competitive sales.

But we are a little disturbed by the Department's plan to estimate an aggregate of the amount of preference-right leases which will eventually mature and base future competitive leasing levels on that estimate.

We normally place more reliance in Government estimates than the coal industry seems to, or than the Secretary of the Interior previously had. But we think that it's a chancy game to estimate how many of these preference-right lease applications will actually be issued.

And we note that only in two coal regions are there really large blocs of preference-right lease applications which could conceivably have a significant impact on how much competitive coal you want to lease in the future. That's San Juan and Powder River. We would recommend that those preference-right lease applications be determined one way or the other prior to setting the terms of a new competitive sale on those regions.

The last thing I would note is that I am reassured by Secretary Clark's commitment to respond in detail to the OTA report. I'm

very disappointed that the report's not available today and that OTA couldn't be here to testify. Because it seems to me that OTA addresses a menu of issues that are very important in restructuring the program in a concensus way.

OTA has gone in much more detail to the planning problems expected by the program, to the regulations and to the question of the environmental adequacy of the pending and past lease sales.

And we would hope that in the Secretary's reply to OTA, the kinds of questions which might lead him to consider a new rulemaking on, particularly, lease planning regulations would be addressed in detail.

Finally, I'd like to summarize the kinds of things that we think ought to be done to start this program moving again.

We think the Department should broaden its review in response to OTA, and we think that the review should carefully cover the kinds of planning failures which OTA has identified.

We think that the Department should undertake a comprehensive rulemaking and to reverse the changes made by Secretary Watt in 1982.

We think the schedule for future sales should be stretched out, and the volumes offered should be reduced.

We think that the process for issuing preference right lease applications should be improved.

We think the currently planned sales should be scrapped and reformulated under the new procedures.

And in response to a question raised by Senator Ford, who asked whether the Department was going to submit a supplemental budget request, I think I should point out that it seems to me that it's incumbent on the Department to submit an amended budget request. Because if you look carefully at their budget justifications document for fiscal year 1985, it's as if it was written by someone from Mars. They didn't understand that the coal leasing crisis had ever happened.

They assumed that three major western coal leasing sales will be held in fiscal year 1984 in that budget document.

In other words, the document doesn't reflect any reality, neither mine, nor Secretary Clark's, nor the Linowes Commission, nor OTA's. And I would suggest that the committee really should ask for an amended budget document that reflects the kinds of planning steps and the kinds of resource needs that Secretary Clark thinks he's going to have to bring into play in order to make the changes that even are suggested here, much less the ones that may be suggested in the future.

Thank you.

[The prepared statement of Mr. Yeager follows:]

37-071 O—84——10

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APRIL 5, 1984

SUMMARY OF SIERRA CLUB TESTIMONY

When the Reagan Administration came to office, the Federal coal leasing program was beginning, for the first time in years, to move forward on a consensus basis. After three years of scandal and mismanagement, the program is once again paralyzed by controversy, litigation, and political dispute. The Sierra Club believes that the consensus which characterized the 1979 Program can be restored, but only on the basis of a comprehensive rewrite of Secretary Watt's ill-considered 1982 regulatory revisions, as well as drastic alterations in the sales schedule currently planned by the Department of the Interior.

The Department's published response to the Linowes Commission recommendations, along with Secretary Clark's decision to administratively suspend any further major sales for the remainder of 1984, is an encouraging first step, because it admits the need for major alterations in the program. However, the response document - the Review of Federal Coal Leasing - is too narrow in scope, too vague in detail, and far too reluctant to recognize and remedy the flaws in Secretary Watt's approach to coal leasing to form the basis of a new program.

In particular, the Department's response to date:

- Fails to respond to many of the valuable criticisms and findings in the body of the Linowes Commission Report;

- Ignores the companion study by the OTA of the leasing program's environmental problems;

- Comes to no independent conclusions of the lease sales, including Powder River, held under Secretary Watt;

- Fails to respond to the Commission's recommendation that leasing levels be reduced from the excessive offerings planned by Secretary Watt; and

- Neglects fundamental problems caused by the planning procedures and regulations instituted by Secretary Watt in 1982.

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TESTIMONY

ON BEHALF OF THE SIERRA CLUB

PRESENTED BY

BROOKS B. YEAGER

WASHINGTON REPRESENTATIVE

BEFORE

THE SENATE COMMITTEE ON ENERGY AND NATURAL RESOURCES

HONORABLE JAMES A. McCLURE, CHAIRMAN

APRIL 5, 1984

Mr. Chairman, Members of the Committee,

Thank you for the opportunity to appear before you today to discuss the future of the federal coal leasing program and, more specifically, the Department of the Interior's draft program alterations, proposed in response to the recommendations of the Linowes Commission on Fair Market Value Policy for Federal Coal Leasing.

The Sierra Club is a nationwide volunteer organization with over 350,000 members dedicated to the protection of our nation's natural resources and the enhancement of the human environment. As you are aware, the Sierra Club has had a long continuing interest in the management of America's public lands, and in the environmentally appropriate development of energy resources on public lands.

For the past three years, we have taken a particular interest in the management of the federal coal leasing program. That interest was forced on us, and on other environmental groups, by the drastic changes in the coal program engineered by Secretary Watt, and the fantastic levels of federal coal proposed for leasing by the Administration during his tenure.

THE LEASING PROGRAM IN PARALYSIS

It is probably too early to give a final assessment of the impacts of Secretary Watt's administration on the coal program. However, some salient facts are clear: When the Reagan Administration came to office, the federal coal leasing effort was beginning, for the first time in many years, to move forward on a consensus basis. The 1979 Coal Management Program Regulations, while hardly viewed as perfect by any party, were acknowledged to be a fair compromise which could serve as the basis for a rational leasing program. Under Secretary Watt, this promising start quickly disintegrated into a maelstrom of controversy. Once again, federal coal leasing is at a standstill, mired in litigation and political disputes. Secretary Watt's regulatory changes are under court challenge, as are the two major sales conducted by his Department. Similar challenges face all four major western sales if the Department attempts to offer them as currently prepared. The conduct of federal coal leasing under the program engineered by Secretary Watt has been severely criticized by every independent study which has been made since the Powder River Sale, from the GAO to the Linowes Commission.

Mr. Chairman, the Sierra Club believes it is time to return to the kind of consensus which characterized the development of the 1979 Andrus coal program. To do so will require a major rewrite of Secretary Watt's ill-considered regulatory revisions, as well as drastic alterations in the major coal sales currently under preparation by the Department. Without such changes, we see no possibility of ending the wrangling which has paralysed the federal coal leasing effort for the past three years.

What program changes should be considered sufficient? Although we are unable to comment in detail until the final version of the OTA study is available, the following general outline is intended to indicate the major areas in which we will be looking for program improvements:

1. Comprehensive regulatory revisions. The Department needs to reestablish the environmental standards, provisions for public participation, and planning requirements discarded by Secretary Watt in his 1982 rewrite of the coal program. A rational policy of basing future leasing on careful estimates of actual demand for production should replace the current policy of leasing to meet industry's "desire for reserves". The delineation of lease tracts should be based primarily on comprehensive land use planning, rather than merely on industry nominations. The application of unsuitability criteria and land use planning screens should be both more stringent and more methodical than is required by the Watt program.

2. The sales schedule for pending and future sales should be stretched out, and the projected lease offerings should be drastically reduced. Secretary Andrus, when he inaugurated the new coal program in 1979, called for the leasing of up to 1.6 billion tons of coal over an eight year period. Such a level more accurately reflects both the actual need for federal coal and the planning capacities of the Department than the fantastic volumes proposed for sale to date by the Reagan Administration.

3. The Department must improve its process for handling PRLAs, and for ensuring careful environmental review and economic analysis prior to issuing leases, where justified, on the basis of such applications. PRLAs which contain significant environmental problems should be rejected. The Department's analysis of environmental impacts, and its analysis of whether the PRLA tracts contain "commercial quantities" of coal, the equivalent of fair market value analysis for competitive leases, should be conducted with full public participation and technical thoroughness. The existing PRLAs in regions where competitive sales are scheduled should be disposed of, insofar as that is possible, before the Department goes ahead with major new lease offerings.

4. The four major currently planned western lease sales should be scrapped and reformulated under revised planning and tract delineation procedures, and on the basis of realistic estimates of market demand. As is clear from both the Linowes Commission Report and the early OTA drafts, the defects in BLM's organization and management of the planning process threatens serious economic and environmental impacts if the sales are held on the basis of the current inadequate planning.

INTERIOR'S RESPONSE TO THE LINOWES REPORT

It is in this context that we must examine the Department's recently published response to the Linowes Commission. The Review of Federal Coal Leasing, for all its inadequacies, is really sort of a milestone. In this document, the Department for the first time acknowledges the need for substantial changes in the coal program. This recognition represents a significant and encouraging change in attitude from the previous Department posture of refusing to admit the validity of any criticisms of the federal coal leasing effort since the Powder River Sale.

The fact that Secretary Clark has agreed to withhold any further major lease sales until the Department's program changes are in place is also an encouraging sign. In our view, the administrative suspension of lease sales offers an unusual opportunity to return a troubled and controversial program to a sound footing. By shelving the pending sales, Secretary Clark has tacitly acknowledged the need for major alterations in the planning procedures and regulations through which they were constructed. We believe the Congress can play a significant role in assuring that the Secretary's response to this situation is not limited to a politically convenient delay of controversial sales and a cosmetic touch-up for the program management, but instead embodies a thoroughgoing effort to correct the deficiencies and excesses of Secretary Watt's coal leasing policies and to set out a new and more solid foundation for the leasing and development of the coal on public lands.

Despite the encouraging character of these initial steps, the proposals contained in the Review of Federal Coal Leasing remain a long way short of what is necessary to achieve the goal of reestablishing a smoothly functioning, environmentally acceptable coal leasing effort. The response to date is too narrow in scope, too vague in detail, and far too reluctant to recognize and remedy the flaws in Secretary Watt's approach to coal leasing to form the basis of a new program.

In particular, the Department's response:

1) Fails to respond to the many useful criticisms and suggestions in the body of the Linowes Commission Report, focussing instead exclusively on the official recommendations of the Commission, many of which are so watered down as to be useless;

2) Ignores entirely the companion study of the environmental aspects of the coal leasing program by the Congressional Office of Technology Assessment;

3) Offers no independent assessment of the lease sales held under Secretary Watt, or of the revised sales procedures instituted during Secretary Watt's tenure;

4) Contains no response to the clear criticism of past excessive leasing levels offered by the Commission, or to the Commission's official suggestion that future leasing levels be reduced drastically from those previously planned by the Department;

5) Avoids any comprehensive review of the current regulations governing coal leasing and pre-sale planning, despite the many criticisms of the 1982 regulatory revisions that are implicit in both the Linowes Commission Report and the OTA study;

6) Fails to define specific procedures for setting leasing levels and delineating tracts which will allow Congress and the public to monitor future program performance; and

7) Neglects to remedy fundamental defects in the planning regulations and procedures, such as the reliance on outdated Management Framework

Plans and the failure of the environmental screening process, which have contributed to the ongoing controversy surrounding recent sales.

THE LINOWES REPORT: RECOMMENDATIONS ARE ONLY HALF THE STORY

As in the case of most Commission studies, the Linowes Commission's formal recommendations form only a small part of its total review of the coal program. The study contains numerous criticisms, findings, and suggestions which should prove helpful to the Department in correcting the problems which have plagued the program. In this perspective, it is hard to understand the Department's decision to reply exclusively to the formal recommendations of the Commission.

For example, the Commission reviewed the tract delineation procedures of the Department, and found that the Department's current system for identifying and delineating lease tracts had a built-in anti-competitive bias:

> The characteristics of tracts selected for leasing have a direct bearing on their fair market value and the ability of Interior to obtain this value by competitive offerings. Yet the tract selection process relied to a large degree on indications from the coal industry about what Federal land should be leased... Because expressions of interest from industry have been given first priority in the delineation process, tract boundaries are normally tailored specifically to meet a company's requirements...
>
> Report of the Commission on Fair Market Value Policy for Federal Coal Leasing, pp. 144, 160.

Clearly, an inherent bias built into the very foundation of the Department's tract selection process is cause for concern and reflection. Yet the Department's response does little to remedy the problem, beyond suggesting a directive to BLM to study the factors affecting competition in tract delineation, and a proposed bidding experiment with alternate tract configurations. There is no commitment to review the policy under which the entire selection process is skewed according to the expressions of interest on the part of individual companies, nor is there any encouragement to those who would like to see the Department reassert its land-use planning responsibility as the foundation for identifying what of the public's coal will be offered for lease, and in what configurations.

In other cases, the Department's reluctance to look beyond the Commission's formal recommendations leaves untouched significant problem areas which, while mentioned by the Commission, were not explored in detail in its report. For instance, in responding to the Commission's recommendation for more federally sponsored drilling to obtain necessary coal resource data, the Department alludes to, but shies away from, a much larger problem: how to assure the adequacy of resource data prior to leasing.

Although the Department reiterates its policy that "tracts will not be offered for lease unless the Department has adequate coal data to appraise

their value," this policy declaration does little more than beg the question. The adequacy of coal resource data has been a major item of controversy in the debate over coal leasing, a fact which is explored at length in the OTA report. Much of the current controversy arises from changes in the Department regulations, instituted by Secretary Watt, which eliminated any guidance for determining when data and analyses should be considered adequate, and which severely weakened the effective application of the land-use planning screens, resulting in the evident dilution of the Department's planning resources.

In fact, over the past three years, the Department has virtually reversed the basic thrust of the land-use screening process contemplated by the 1979 program. Instead of starting from a basis of comprehensive land-use planning, identifying potential coal development areas of high value and acceptability, and then soliciting industry comments, the Department begins the process on the basis of industry's expressions of interest, and relegates multiple-use planning to a sort of tag-along role. Instead of eliminating tracts of uncertain value, or of potential multiple-use or environmental conflict, and focussing its planning resources on high confidence tracts with good development potential, the Department has systematically refused to eliminate any but the most obvious throw-aways. The result is a program which has stretched its planning capacity beyond the outer bounds of credibility, and which rarely has sufficient information to be sure of the value of tracts which are proposed for lease, or the possible environmental consequences of developing them. None of this is mentioned in the Department's response document.

It is our expectation that many of these planning issues will be addressed at length in the final report of the OTA task force. On page 11 of the Review of Federal Coal Leasing, Secretary Clark commits the Department to a careful review of the OTA report, including a second response to Congress indicating the "Department's assessment of OTA's findings and their relationship to the Commission's recommendations and its own review." It is to be hoped that the Department will consider these issues fully in its response to that report.

POWDER RIVER SALE? WHAT POWDER RIVER SALE?

It is notable that the Department's response to the Commission nowhere mentions the Commission's extensive criticism of the lease sales offered during the past two years, and particularly of the ill-starred Powder River Sale. In the Secretary's letter of transmittal, he divides the internal Department review into two parts: a review of programmatic issues, presumably completed in this document, and review of questionable conduct by individuals, which he says "should not affect or relate to proposed procedures for future sales."

However, the Commission's extensive findings concerning the conduct of the Powder River Sale cannot properly be limited to questions of individual misconduct. In fact, the Commission found evidence of comprehensive mismanagement based in the procedures of the Department and the institutional underpinnings of the leasing effort. The following findings

give a flavor of the Commission's judgment:

> The Commission found that the key management decisions for the Powder River Sale were made by two of Secretary Watt's close associates... these officials had developed, well in advance of the sale, an overriding policy objective to lease a substantial amount of coal reserves in the Powder River Basin....
>
> After the sale notice had been published, the Department hastily developed new post-sale bid acceptance procedures... These changes in procedures were decided on without careful development and evaluation... The Commission concluded that Interior Department officials did not use appropriate decisionmaking procedures, did not provide for objective consideration of dissenting views and alternative proposals, and did not achieve appropriate coordination between policy officials and career staff... it appears that no consideration was given to delaying the sale...
>
> The Commission concludes that the Secretary, and perhaps the Justice Department, should reexamine the disclosure of pre-sale appraisals and the subsequent dissemination of the information.
>
> The Commission found that the Interior Department experiment with entry level bidding was a failure... There is strong evidence to suggest that the procedural changes in themselves resulted in bids less than would have otherwise been submitted.... The Commission also concluded that the Interior Department appraisals for the ...(sale) contained significant technical inadequacies... the Commission concluded that, on the basis of this information alone, the Secretary did not receive a sufficient payment for the coal leases sold.
>
> It (the Commission) concluded that the magnitude of the sale itself probably contributed to some extent to the (market) decline...the Interior Department probably offered excessive amounts of Federal coal reserves in a declining market and this, in turn, probably lessened the prospect of receiving fair market value.
>
> Report of the Commission on Fair Market Value Policy for Federal Coal Leasing, Feb. 1984

Clearly there is more here than individual imcompetence or malfeasance. The litany of bad decisions and planning failures which led to the Powder River disaster was only possible in the context of a program which demanded absurdly high leasing levels, limited or in some cases eliminated constructive public involvement, regarded comprehensive planning as a burden rather than as a tool, derogated or ignored environmental concerns, elevated headquarters ideology above field experience, and encouraged the view that the industry, rather than the public, was the government's client. The failure of the Department's response to address these criticisms is telling.

At the same time, the Department's review contains no indication of the status of its ongoing investigations of individual misconduct in connection with the Powder River sale. The Secretary's letter of transmittal indicates that such investigations are proceeding on a parallel track. It is to be hoped that in pursuing these issues the Secretary will also respond to the Linowes Commission's charge that high Department officials covered up knowledge of wrongdoing long after the sale had already become a matter of controversy, including withholding relevant reports of the Department Inspector General from the public and from the Commission itself.

EXCESSIVE LEASING: NEW PROCEDURES WITH THE SAME RESULT?

Similarly, the Department fails to respond to the Commission's clear criticism that it has systematically offered excessive amounts of coal for lease. It is true that the Commission found that the Department's inflexible adherence to "long-planned leasing levels" was a major contributor to the failure of the Powder River Sale. The proposed procedures for setting future leasing levels seem to be crafted largely in response to this finding, with arguable results.

However, the Commission report contained many other criticisms of the Department's past addiction to high leasing levels:

> The Reagan Administration policy of "leasing to meet the demand for reserves"... indicated a change in philosophy involving a greater willingness to lease large amounts of coal...
>
> High lease offerings might reduce the number of bidders for each lease offered, and bidders might also make lower offers for those tracts on which they bid... High leasing levels could force the Government to turn to environmentally inferior tracts to meet its leasing objectives... high coal leasing levels can be costly to ranchers and other local groups affected by Federal coal development...
>
> The Commission found that the Interior Department has delineated coal tracts containing 10.2 billion tons of Federal coal for near-term sales... the Commission concluded that these amounts of delineated and nominated coal would greatly exceed the demands for Federal coal leasing over the next two years... the Commission concluded that the upper range of Interior plans would result in substantially higher leasing levels than are justified.
>
> Report of the Commission on Fair Market Value Policy for Federal Coal Leasing, pp. 106ff.

The Commission specifically criticized the Department for "exaggerating the risks of underleasing coal and... seeking to lease too much coal." In the case of the Powder River Sale, the Commission found

that the federal government had accelerated the decline of the regional market for coal reserves, and probably prevented the attainment of fair market value, by leasing large amounts of coal into a depressed market. Similarly, the contractor reports prepared for the OTA study found that the Department's rigid commitment to high sale volumes had exacerbated already serious planning problems and had contributed to a situation with potentially severe environmental consequences.

The Commission recommended a total volume of federal coal leasing of between 3 and 4 billion tons over the next two years, taking into account the volume that might be provided by the issuance of any pending Preference Right Lease Applications (PRLAs). Even this recommendation seems inordinately high in light of the established development potential of the 17 billion tons of undeveloped federal coal leases already in private hands. (Cf. An Assessment of the Development and Production Potential of Federal Coal Leases, OTA, December 1981). Yet the Department's response never mentions this recommendation, nor the criticism of excessive leasing in the past. Nor does it make any commitment to reduce the volume of lease offerings in the future.

In attempting to address the Commission's recommendation for flexibility in determining the size of lease offerings, the Department is proposing to increase the discretion of the Secretary with regard to the whole area of planning leasing levels. Yet even the Linowes Commission, a mild-mannered critic at best, has noted the potential problems posed by such wide-ranging discretion:

> The Federal coal leasing program necessarily involves large amounts of administrative discretion. It is essential that the public have confidence in the ability and willingness of the administrators of this system to pursue the public interest. By putting this element in doubt, the managers of the Powder River lease sale did a disservice to the Federal coal leasing program.
>
> Report of the Commission on Fair Market Value Policy for Federal Coal Leasing, p. 90

The clear abuse of administrative discretion with regard to the Powder River Sale should give pause to the Congress as it considers the new proposals for planning leasing levels offered by tne Department. Under the new proposals, the Department would increase the number of factors to be considered in setting leasing targets, avoid selecting a "preferred alternative" as part of environmental impact statements for regional sales, reserve the right to change the offering up until the date of sale, and "apply the appropriate national perspective to the individual leasing levels to assure that the aggregate coal being considered for offer is consistent with the national interest."

While it is probably wise to reserve the right to delay sales, or limit the volume of offerings, in response to emerging market conditions, the converse may not be true. That is, it will not be

possible to achieve careful planning or legitimate public participation in a program which carries too many tracts too far along in the planning process, thus diluting the planning capacity of the Department, or which identifies a preferred alternative too late in the planning process to solicit or consider the response of an interested public.

In this context, the Department should also be urged to establish lease planning procedures, which, through their specificity and opportunity for public participation, offer Congress and the public a clear way to monitor the development of individual lease sales and to assess the quality of overall planning. A bold directive to the Secretary to consider the national interest in setting overall leasing levels leaves little room for dissent or differing opinions. Instead, it acts like a black box - because the criteria of its operation are unknown, there is no way to question the result. Similarly, although the general views of the Justice Department on the need to increase competition in the coal markets are certainly to be taken into account, their expertise to determine the quantitative national need for coal is less than obvious. Yet, the Department's proposal accords such estimates from Justice the same deference which will be given to the Energy Department's modelling of national coal demand.

Again, in its response to the Commission's recommendation that future leasing levels take into account the volume of coal that may be leased through the determination of pending PRLA's, the Department offers to estimate "the probability that a certain amount of coal from preference right lease applications will be leased and mined," based on a series of factors. Such a process is bound to be uncertain, and to produce uncertain results. Since the greatest proportion of the pending PRLAs lie in two coal regions, Powder River and San Juan, perhaps it would be better to determine the majority of applications in these regions prior to offering major new competitive leases. The existing overcapacity in these regions clearly obviates the need for immediate leasing. A deliberate approach would avoid the pitfalls of government estimates, while at the same time assuring that the Commission's recommendation will be complied with.

THE 1982 REGULATIONS: AN ENVIRONMENTAL AND PLANNING DISASTER

Although the OTA study is still at the printers, recent drafts and the contractor studies which form the basis of the report have come to devastating conclusions in regard to the environmental aspects of recent federal coal leasing policy. The changes which Secretary Watt instituted in the coal program regulations, reducing public involvement in the leasing process and severely weakening planning and environmental standards for the preparation of lease sales, have resulted in the threat of an environmental nightmare in the western coalfields. The Department appears utterly unable to segregate environmentally sensitive tracts, or those with key resource conflicts, prior to leasing, without the direct and extraordinary intervention of the public and of Congress.

The OTA task force found that the Department's environmental review and planning procedures were systematically defective. Its study

revealed extensive problems with data adequacy, inability to identify environmentally sensitive tracts, and unwillingness to respond to public pressure for the protection of other resource values. OTA tied these problems directly to the high leasing levels mandated by Secretary Watt, and to the regulatory changes which he instituted.

We remain hopeful that OTA's findings concerning the pre-sale planning process will be addressed in the Department's promised response to the OTA study. However, even in the context of its response to the Linowes Commission, the Department should have been expected to undertake a comprehensive review of its program regulations. In the view of the Sierra Club, the vast majority of the regulatory changes engineered by Secretary Watt in 1982 must be reversed if the program is to regain a solid footing.

COAL LEASING: THE FY'85 BUDGET REQUEST

Curiously, the Department's 1985 Budget Justifications contain little evidence of the current coal leasing controversy. And, other than the tacit delays in currently scheduled lease sales, the available evidence indicates little change in Department attitudes or procedures.

Similarly, recent actions by the Bureau of Land Management in the field seem to assume that the major western lease sales will be held, more or less as planned, after the end of a suitable "cooling off" period.

For instance, the recently published Draft EIS for the next Powder River Sale proposes the sale of 2.6 billion tons of coal in new competitive leases, and assumes the development of up to 6 billion tons of coal in Preference Right leases, in the exact same region in which the Department fell flat on its face attempting to lease 1.6 billion tons of coal a year and a half ago. Clearly this is not what was intended by Congress in enacting the sales suspension and calling for the Linowes Commission and OTA studies.

If 1.6 billion tons of coal is too much for the market to accommodate, and for the Department to effectively plan for, what about 2.6 billion - or 8.6 billion, including the non-competitive leases? We believe Secretary Clark should be asked to withdraw the Powder River DEIS, and to clearly reject the policy it embodies of leasing coal without reference to actual demand or planning constraints.

The FY'85 Budget Justification for the BLM assumes that the four major lease sales currently planned - San Juan, Uintah-Southwest, Green River-Ham's Fork, and Powder River, will proceed in FY'84, and that FY'85 planning and resource allocations will primarily reflect the requirements for post-sale evaluations and planning as necessary for future sales. Such a view is clearly outdated. We believe the Department should be asked to submit a Supplemental Budget Request reflecting its intentions to revisit the planning for pending sales, and to remedy the many defects identified in its planning processes by both the Linowes Commission and the OTA.

CONCLUSION

Secretary Clark's willingness to suspend the major coal lease sales planned by his predecessor, and to consider major changes in the rules and procedures for federal coal leasing, opens an unusual opportunity to correct the problems which have plagued the federal coal management program for three years. In order to make the most of that opportunity, a program review which is broader and more thorough than the Review of Federal Coal Leasing will be required.

Thank you very much.

The CHAIRMAN. Thank you very much.

I know that there will be further questions that will be submitted to the members of the panel, and they may be submitted through the balance of today and up to the close of business today by members of the committee, and we will ask you to respond in writing to those questions when submitted. And the record will remain open 2 weeks for that purpose.

Mr. Yeager, how would the Sierra Club determine how much coal ought to be leased in a given year?

Mr. YEAGER. Well, fortunately, that determination is not up to us. But I think that we——

The CHAIRMAN. I know it's not, but you're free to criticize and I was hoping that you would go beyond criticism and make a suggestion.

Mr. YEAGER. OK. I think that the 1979 program had an attempt to use careful models that were developed by the Department of Energy, the kinds of evidence that came in from the field about the nature of the coal market in order to understand what the aggregate amounts of coal that might be needed.

And I think that in looking at the future leasing levels, I really think that we should try to estimate because, as Mr. Glen pointed out, if you adopt a philosophy of leasing for reserves you really run head on into the interest of the public in having its public lands that are leased developed on a reasonable schedule; because leasing of reserves is not compatible with a diligent development requirement of any kind.

And I sense that, although Members of the Congress, some would like to alter the diligent development requirement, they don't want to repeal it. And in that respect, I think that it would be good to look back at the 1979 program, try to evaluate what in it was of value in terms of the modeling of future coal needs; try to elaborate on that and try to come up with a reasonable method of estimating how much coal should be offered for lease in any region in any given 5-year period even, and to adjust that as necessary according to market conditions.

But I really don't feel comfortable with the idea we lease as much as the industry, quote, "desires," because at that point what we're doing is getting into this problem where we have the—the industry sort of submits expressions of interest on vast volumes of Federal coal which, everyone who looks at the current coal market knows can't be developed within a reasonable amount of time in the volume in which the interest is submitted, and the Government is left with no careful way of estimating how much could really go out the door.

The CHAIRMAN. Could I rephrase the question, or state it in a different way?

You have suggested that an estimate should be made of the amount of coal actually needed rather than going to leasing for reserves and depending upon diligence requirements. Am I correct?

Mr. YEAGER. Well, I didn't say we wouldn't like to depend on diligence requirements. But I think what I said was that in order to make the diligence system, that is, the system of quick production of Federal coal reserves work, we think you have to lease according to a reasonable estimated amount.

The CHAIRMAN. Well, would it be fair to state that there are two ways to approach the problem? One is by determining how much coal is needed and trying to make that available on a reasonable schedule, and the other is to permit the industry to lease whatever they want and have a diligence requirement so that there's a penalty if they lease too much.

Mr. YEAGER. Well, but as we see, what happens with the diligence requirement, development requirement, it gets into political trouble very fast. And we have to consider this in the context of what kind of pressures are on you as a Senator and on——

The CHAIRMAN. I understand that, but aren't those two different approaches to the same kind of a problem with determining who makes the decisions as to how much coal will be mined and where it will come from?

Mr. YEAGER. Well, I guess I would point out one major difference that I see.

The CHAIRMAN. All right.

Mr. YEAGER. I mean, why is the Sierra Club interested in diligences at all, if it's just an economic issue?

We——

The CHAIRMAN. Excuse me. What was that?

Mr. YEAGER. I posed a rhetorical question which is, why would the Sierra Club be interested in diligence at all if it was just an economic issue. We don't think it is just an economic issue. We think it's an important economic issue. But we also think it's important that the Government assert its responsibility to plan for the development of the public lands. We don't find that's very easy to do when enormous blocs of the public lands are in private hands because of past excessive leasing, and the planning for those blocs is not very well coordinated.

In fact, the States also share this concern. I note there's a letter from Governor Lamb that mentions this, it says, you know, how are States and local communities going to plan for the development of coal if we don't know where in the world it's going to be developed?

There's 750,000 acres of Federal coal that are under lease, and nobody knows which bloc is going to pop out of the woodwork next.

The CHAIRMAN. Well, that gets back to kind of the same kind of philosophical background as, should there be a planning function that is centralized in Government to determine how resources will be utilized, or should there be a process by which the marketplace makes those choices with reasonable safeguards to public interests?

Mr. YEAGER. With all due respect, I think the market is good at making economic choices, but it's not good at protecting the public interest. And I think the Congress in enacting——

The CHAIRMAN. What motivates me to ask that question—and they're certainly rife with difficulties. I don't believe that we can say that diligence requirements are without difficulty. I don't think we can say that Government planning is without difficulty. The question is, which is the most difficult and which will yield the best, most predictable results for the benefit of the citizens of this country, for those who own the resource—and they are public resources—and those who consume those resources, and that's another segment of the same public.

Mr. Glen, is there a way in which we can refine the diligence requirements to make certain that if you overlease the public interest is protected at the other end of the process rather than at the beginning end?

Mr. GLEN. Well, first of all, I agree that there should be a diligence structure for leasing. First of all, I don't want my competitors out there leasing coal forever and ever, waiting for the price to go up and then having a market advantage against me because they've been able to amass a large coal reserve at a very little cost.

I do think that probably when diligence was conceived and passed by Congress, the 10-year limit was reasonable. It is no longer reasonable or——

The CHAIRMAN. What has changed to make it less reasonable?

Mr. GLEN. Well, primarily two things have changed. No. 1. We have to go through a good 3- to 4-year period of environmental analysis and approvals. And that analysis and approval is a little less cumbersome on non-Federal lands, but not much.

We're getting better at it, and the Government's getting better at it, but the fact is, it is a tough, tough process.

Now, if you have an alluvial valley floor, a Golden Eagle, or an archeological or paleontological site that would help you, because that could easily double the 3 or 4 years into 6 or 8 years. And I've seen it happen, not only in our own company, but in other companies that belong to the associations.

The second thing that's happened is that there are more coal companies out there and more areas in development, and it's just more competitive.

Utilities are better fuel buyers than they used to be, too. The utility fuel buyer used to have a fairly chummy relationship with a number of coal company entities, and so they didn't do a heck of a lot of research before they signed a contract. Now, if a coal company—excuse me. If a utility goes out for a coal contract, he is going to search the horizon all the way for a potential supplier. And that, combined with the fact that there's so much coal capability in every region of the country now, means that there's much, much more competition. And, of course, that increases the amount of time necessary to be able to develop a coal lease, particularly when you go in on a speculative basis, hoping that if you do your homework, develop your relationships, you don't have severe environmental problems that at the end of that 10 years you will be able to sign a contract.

The CHAIRMAN. Let me try to rephrase that and see if I understand it, what you're telling me.

That it was much more predictable earlier that if you got a lease you could sell it, or if you sold some coal you could get a lease?

Mr. GLEN. I don't think it was much more predictable. There were some uncertainty back then, too, but it was, yes, more predictable.

The CHAIRMAN. And that today your problem is that you can't sell coal until you have a lease, and you don't want to get a lease until you have coal?

Mr. GLEN. Exactly. And I don't think it's been said better than that anywhere. You can't sell coal without a lease. And, believe me, I've tried. It can't be done. It can't be done.

The CHAIRMAN. Mr. White, would you agree with that?

Mr. WHITE. I would.

The CHAIRMAN. Mr. Yeager?

Mr. YEAGER. I'm not sure I would agree with the whole drift of it. I would have to go back and look at each part. I'm sure that I agree that you can't sell coal unless you have a lease for it.

The CHAIRMAN. And you can't get a lease unless you've got a sale if your diligence requirements are too tight?

Mr. YEAGER. Well, that may be true, but that operates another way, too, and which I think is evident from the Powder River sale and which is something that I think the people that are concerned with the health of the industry ought to look at.

We always in the environmental community seem to be riding against this claim that more leasing is better for better for the industry.

When in fact, in Powder River, it seemed to me in looking at the sale from the outside, one of the things that happened was that a large bloc of coal was put up where there were already excessive coal under lease. And the result was that companies couldn't secure a contract prior to the lease sale because the contracts were already in the hands of people who had existing mines with maintenance tracts or bypass tracts of whatever else out there.

The result was that, although 1.6 billion tons of coal was sold at Powder River, only one new competitor entered the Powder River region. And I think there you have a situation in which past excessive leasing has really frozen new competitors out of the market, because little companies can't afford to put a bunch of capital down on a bonus bid unless they have a contract, and they can't get a contract if everybody else has the coal tied up.

The CHAIRMAN. I asked the Secretary if he would provide for me their tabulation of coal—the quantity of coal under lease, total tonnage, and the volumes that are economically recoverable within those leases, and the volumes committed to long-term contracts.

Could you do that, Mr. Glen, for us?

Mr. GLEN. We'd be happy to to the extent that we can. We hired a consultant to try to go to each company a couple of years ago—it was part of the section 3 deal that we hired out to Harry Perry of Resources of the Future. He had a devil of a time doing it himself. But we have done some and we would be glad to furnish you that information.

The CHAIRMAN. Mr. White, could you?

Mr. WHITE. We'll attempt to do that. But, as Mr. Glen is indicating, that is fairly sensitive information, particularly that which is under contract.

The CHAIRMAN. And I don't ask you to provide proprietary information or invade the proprietary information of others.

Mr. GLEN. May I offer an example of how that might be difficult, but at the same time I'm trying to prove a point I made earlier.

A company may have a signed contract for 25 years for x number of tons that will cover a 200-million-ton reserve, but they have leased contiguous 700 million tons because if the infrastructure's there, they believe that they will be in a better competitive position to renew that contract far beyond, obviously, the terms of the people that are running the coal company now. But that's their

intention, to maintain long-term, almost infinite contiguity so that they, in essence, help freeze the competition out. I mean that's a bad term, but what they're doing is they are making themselves more competitive by having long-term contiguous coal.

That's the type of information that's tough to get from a company.

The CHAIRMAN. Mr. Yeager, do you have tabulations that you could provide to us or information that you could provide to us on that?

Mr. YEAGER. We have not secured independent information. We relied in that question on the large OTA report, the 5-year OTA study that was issued in December 1981, which I still think is a valuable compendium of information about the development prospects.

The CHAIRMAN. You rely upon the information that is contained in there as the best available information?

Mr. YEAGER. Yes.

The CHAIRMAN. Mr. Yeager, and I think the others have talked about continuity. You suggest that we reduce the volume of coal under lease, tighten the diligence requirements.

Isn't there a corollary to that as well, that there be predictable supplies coming on the market periodically, if you deprive them of reserves then they have to, in effect, be able to replace their production by going into the market and buying more?

Mr. YEAGER. I think we would agree with that, but I think that the level at which reserves come on the market ought to be in some kind of real relationship to the existing backlog of leases. That's always been an important question. There's always been a debate about how many of these existing leases are really developable. I personally find that OTA did an enormously detailed examination of that, and that that's never really been criticized extensively by any other party to the coal debate that I know of.

The CHAIRMAN. Mr. Glen, Mr. White, you have both indicated strong opposition to the repeal of 2(c) and you have, in each instance, referred to the competitive advantage which railroads may have in marketing coal because they are the transporters of their competitor's coal as well.

And I understand that that's a real problem. But that——

Mr. GLEN. It could be.

The CHAIRMAN. Excuse me?

Mr. GLEN. I say it could be a problem.

The CHAIRMAN. Yes. It is a real potential problem, at least. However, whatever semantics we use, you're concerned about that possibility. I understand that.

At the same time, how long can those checker-board areas deny to the owners of the coal the opportunity to develop the coal?

Mr. GLEN. Can I go first, Martin?

Mr. WHITE. Sure.

The CHAIRMAN. Mr. Glen?

Mr. GLEN. First of all, they are doing quite well, thank you, on that checkerboard coal, because they lease it to companies like Arch Mineral and then they get a hefty royalty from it which, in past times, has often exceeded the Federal royalty that currently is all standarized at 12½ percent.

The CHAIRMAN. So you're suggesting the answer is, let them sell it to somebody else rather than produce it themselves?

Mr. GLEN. That's correct.

Now, we have the most touchy relationship in terms of skirting the law, and that's the Medicine Bow Coal Co. It's a joint venture between Rocky Mountain Energy and Arch Mineral Corp.

Arch Mineral leases the coal. We share the profits, we share the cost with Rocky Mountain Energy. It has been a very healthy relationship for everyone involved.

Obviously they, in sharing half the cost and half the profits, they're not sharing all the costs, therefore, they're not sharing all the profits. But I think that that comes as close to a working compromise as one could conceive.

And we do have a very good relationship with——

The CHAIRMAN. That's one you like because you got part of the action?

Mr. GLEN. Exactly.

The CHAIRMAN. Mr. White, do you like that kind of arrangement, where he's got part of the action and you don't?

Mr. WHITE. Well, let me just come at it, if I may, Senator, from a different manner.

I think as you look at that you have to realize that the railroads were generally given the coal by the Federal Government because it was a land grant to build the railroads across American. And so it seems like you've got to view their ownership of that coal maybe in a little different light.

The CHAIRMAN. Why?

Mr. WHITE. In my mind, you know, they were provided a very competitive situation—or a very controlling situation.

The CHAIRMAN. Well, that would be true of any old coal company, wouldn't it, the reserves that they bought a long time ago and have held, regardless of why or how, they're perhaps in a better competitive position than a new entrant?

Mr. WHITE. If a company bought the reserves, they have some ongoing obligations that probably wouldn't have allowed them to hang onto the reserves as long, as where they were given to——

The CHAIRMAN. You stress the word "give." I think that there was a contract made between entrepreneurs a century ago that said if you'll build the railroad there's a social value involved and we'll pay you, and we'll pay you by giving you land.

Mr. WHITE. Well there's no question, that was the contract. But I think it has created a different situation. And I'm speaking now not as a chairman of the Western Regional Council, because we have a couple of railroads that are members of that, but I asked a railroad fellow one day, he asked me to back off on 2(c) and I said to him: we have two mines. Mine is here and it's got your leases, and it provides an opening there where you can raise the royalty in your leases with me. Yours is over here, you have your leases, plus now you've got some from the Federal Government. They look just like mine.

Now, we go to the same customer, and it's very competitive. Usually it's down to a very few cents per million Btu determines who gets the contract.

He controls the railroad I'm going to haul my coal on. He controls the leases from which I'm going to produce it. And when it gets down to the final decision of who gets the contract, he's going to beat me.

And he sat there and he looked at me and he said, you know, I'm not going to ask you, I withdraw my request to you.

[Subsequent to the hearing Mr. White submitted the following:]

WESTERN ENERGY COMPANY
GENERAL OFFICE: 107 EAST GRANITE, BUTTE, MONTANA 59701
(406) 723-4349

cc. Bob

Official Committee File

April 9, 1984

SENATE COMMITTEE ON
ENERGY AND NATURAL RESOURCES
RECEIVED
APR 12 1984

Senator McClure
Chairman
Committee on Energy and
Natural Resources
Dirksen Senate Office Building
Washington, D.C. 20510

Dear Senator McClure:

I would like to thank you for the opportunity to provide testimony, as a representative of the Western Regional Council (WRC), on the Linowes Commission Report and Secretary Clark's response to that report.

During the discussion, after I presented the WRC remarks, you asked a question of me concerning the Repeal of Section 2C. I am certain that I made it clear that I was not representing the WRC in my response to your questions. The WRC has not taken a position on the Repeal of Section 2C. Rocky Mountain Energy Company and Meridian Land & Mineral Company, both subsidiaries of railroads, are members of the WRC and, as I am sure you are aware, would be very adamantly against the WRC taking a position on the Repeal of 2C. However, I did make comments relative to the Repeal of 2C as the President of Western Energy Company and I wanted to make clear that my comments relative to the Repeal of 2C only represented the position of Western Energy Company and did not represent the position of WRC.

I would like to ask that if the record does not clearly state the above that it be corrected accordingly.

Sincerely,

Martin A. White
President

MAW/gh

WE:01:0103

Mr. GLEN. Martin did a very good job of explaining that. He's exactly right. And there's one other thing that the railroads have going for them. They pay one royalty, we pay two.

The CHAIRMAN. Well, that's true of any other owner of coal, isn't it?

Mr. GLEN. But Senator, that's why we're complaining about the system of——

The CHAIRMAN. You don't want any owner of coal to be able to lease on public lands?

Mr. GLEN. I don't understand.

The CHAIRMAN. If they own their own coal, they shouldn't be allowed to compete with you by leasing public coal?

Mr. GLEN. Well, as long as they pay the same amount of royalty to the Federal Government on the same number of acres, there's no disparity. But the——

The CHAIRMAN. Well, the disparity comes from the fact that they own some their own and they lease some, and they mix the two. Is that correct?

Mr. GLEN. Precisely. So we're paying 12½ percent to them, 12½ percent to the government.

The CHAIRMAN. Isn't it the same as if they were not a railroad?

Mr. WHITE. No. No.

The CHAIRMAN. All right. Tell me why?

Mr. WHITE. Because you have to think about the items that are controlled as you approach the customer. No one else controls as many items as the railroad does. The private owner, he controls nothing more than I do. But when I go to the railroad, he controls more. And the railroad's cost to ship it is generally two or three times the cost to produce it. So he can vary it by such a small——

The CHAIRMAN. All right. Let's separate that for a moment then. If you had the same shipping costs, would there be a competitive advantage that is different because the railroad owns the coal as compared to some other private owner of coal?

Mr. WHITE. It's the royalty. And I know your position, you made it clear here a minute ago, that because he earned that through building the railroad across America—now, not all railroads that built a railroad across America were granted that kind of a concession for doing it.

The CHAIRMAN. But they own it, don't they? What you're saying is they shouldn't own it in the first place.

Mr. GLEN. Let me dig in here.

The CHAIRMAN. All right.

Mr. GLEN. The fact that they bought the railroad 100 years ago—excuse me, built the railroad 100 years ago and were compensated for it really has nothing to do with buying or selling coal or obtaining a coal contract nowadays. I mean that deal was amortized 55 years ago.

The CHAIRMAN. Same thing's true of Standard Oil Co. holdings in some instances.

Mr. GLEN. Yes, sir, that's correct.

The CHAIRMAN. Standard Oil shouldn't be permitted to buy any Federal leases?

Mr. GLEN. Oh, no, I believe they should. If they owned the checker-board leases and if we wanted the other checker boards, then I would have a conflict with Standard Oil as well.

But all I'm saying, Senator, is that in those—and there's one assumption here that I guess we failed to make clear.

If the coal is taken out of both types of land the situation is the case.

When Arch went into the Hannah Basin in 1970, we leased every other section. We leased the RME sections, and then we went into the long moratorium. So we literally have mines that aerial photos today would look ridiculous because we've had to mine every other section.

Then we finally filled in some of the holes later on after 1979.

The CHAIRMAN. And it would have been cheaper and more efficient for you not to have to do it that way?

Mr. GLEN. Oh, clearly, clearly, clearly. That's the one single thing that raised our costs so high in the Hannah Basic and made us less competitive today.

But the fact is we had access to that coal, we didn't have access to the Federal Government's coal. Now, assuming that geology does not—the geology of coal does not pay any attention to landowner patterns, those coal seams would have been contiguous throughout both types. And let's assume that we take both types of coal out of the land in order to fulfill a contract. That's where we're saying the royalty disparity is. Because if RME—or another railroad affiliate—I don't mean to pick on them all the time, but they're the ones that I'm used to.

If RME was leasing the coal, they own half the coal, they lease half the coal, they pay one royalty to the Federal Government, in essence, on half the coal they mine of 12½ percent.

The CHAIRMAN. And they're consuming an asset which they own?

Mr. GLEN. Correct. And I'm rot faulting the fact they own it. All I'm saying is——

The CHAIRMAN. And you don't think that's a royalty?

Mr. GLEN. No, not to the extent that the built-in advantage far outweighs, in my estimate as their competitor anyway, the fact that they're depleting their resources.

The CHAIRMAN. Should you have been able to lease that coal that was checker-boarded with your private ownership?

Mr. GLEN. With our private ownership? You mean if we onwed the other half?

The CHAIRMAN. Yes.

Mr. GLEN. Well, I would put myself in the same position as RME, at least I would certainly acknowledge the howls of the competition if I owned the other half and they didn't.

All I'm saying is that if we go to a customer and we say, look our price is $20, our production royalty is 12½ percent; therefore, we're going to pay the Federal Government $2.50. We pay $2.50 throughout the entire coal reserve; half to RME, half to the Government. They pay $1.25 and it's the $1.25 that's going to get them the contract with the customer because they can offer a cheaper price.

The CHAIRMAN. Mr. White.

Mr. WHITE. The problem with answering your question is that you make an assumption that I think is impossible to make, that the freight rate is going to be the same. That's the problem.

The CHAIRMAN. All right. That's what really bothers you then. It isn't the fact that they own part of the coal, it's the——

Mr. WHITE. In my particular situation, that bothers me. In our particular company's situation, that bothers me, because he can adjust—the railroad can adjust that freight rate so little and beat me out of the marketplace that he's going to do that.

The CHAIRMAN. Well, I understand the concern if, indeed, they can vary the transportation cost in order to sell their own coal. And I understand your premise.

I find it more difficult to follow a premise that says because they own some they can't comingle it with some that they lease because they'd be better competitors in the marketplace. Certainly, they would be willing to sell their coal for less.

Mr. GLEN. I hope you acknowledge our point. We're the other guy sitting there with the disparity in cost.

The CHAIRMAN. I understand that. We had the same problem with respect to timber ownerships. Some large timber outfits and some smaller ones own some of their own timber lands and they also buy some off the public land, and if they're willing to sell their timber for less than they have to pay the Federal Government, they can comingle the two and be a better competitor.

Mr. GLEN. And there's very little argument to that point of view. It's a very sound argument. And I hav had endless conversations with Assistant Secretary Caruthers, who shares your point of view on this thing, and I also have to admit I'm being a little provincial about it because we're the guys next door.

The CHAIRMAN. And you're entitled to be, so long as we know what it is.

Mr. GLEN. Well, we know what it is, believe me.

The CHAIRMAN. Thank you, gentlemen, very much.

Mr. GLEN. Thank you.

Mr. WHITE. Thank you, Senator.

Mr. YEAGER. Thank you.

The CHAIRMAN. I appreciate having your testimony today.

[Whereupon, at 1:10 p.m., the hearing was adjourned.]

APPENDIXES

APPENDIX I

Responses to Additional Committee Questions Submitted by the Commission on Fair Market Value Policy for Federal Coal Leasing

JAMES A. McCLURE, IDAHO, CHAIRMAN
MARK O. HATFIELD, OREG.
LOWELL P. WEICKER, JR., CONN.
PETE V. DOMENICI, N. MEX.
MALCOLM WALLOP, WYO.
JOHN W. WARNER, VA.
FRANK H. MURKOWSKI, ALASKA
DON NICKLES, OKLA.
CHIC HECHT, NEV.
JOHN H. CHAFEE, R.I.
JOHN HEINZ, PA.
DANIEL J. EVANS, WASH.
J. BENNETT JOHNSTON, LA.
DALE BUMPERS, ARK.
WENDELL H. FORD, KY.
HOWARD M. METZENBAUM, OHIO
SPARK M. MATSUNAGA, HAWAII
JOHN MELCHER, MONT.
PAUL E. TSONGAS, MASS.
BILL BRADLEY, N.J.
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D. MICHAEL HARVEY, CHIEF COUNSEL FOR THE MINORITY

United States Senate
COMMITTEE ON
ENERGY AND NATURAL RESOURCES
WASHINGTON, D.C. 20510

March 23, 1984

The Honorable David F. Linowes
Chairman, Commission on Fair Market Value Policy
for Federal Coal Leasing
University of Illinois
Room 308, Lincoln Hall
702 S. Wright Street
Urbana, Illinois 61801

Dear Chairman Linowes:

Thank you for your appearance before the Committee at the oversight hearing on the Linowes Commission Report on March 21, 1984. Your contribution was greatly appreciated.

For your information, a second day of oversight hearings on the report has been scheduled for Thursday, April 5, 1984, at 11:00 a.m. in Room SD-366. The Department of the Interior and public witnesses will present testimony at that time.

Enclosed are questions submitted for the record by members of the Committee. Please answer those questions directed to all Commissioners in addition to those requiring your individual response. A timely reply to these requests would be appreciated. Your answers may be directed to the attention of Gary Ellsworth, (202)224-5304 in Room SD-358.

Sincerely,

Jim McClure

James A. McClure
Chairman

Enclosures

JAMES A. McCLURE, IDAHO, CHAIRMAN
MARK O. HATFIELD, OREG.
LOWELL P. WEICKER, JR., CONN.
PETE V. DOMENICI, N. MEX.
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MICHAEL D. HATHAWAY, STAFF DIRECTOR
CHARLES A. TRABANDT, CHIEF COUNSEL
B. MICHAEL HARVEY, CHIEF COUNSEL FOR THE MINORITY

United States Senate

COMMITTEE ON
ENERGY AND NATURAL RESOURCES
WASHINGTON, D.C. 20510

March 23, 1984

The Honorable Donald C. Alexander
Member, Commission on Fair Market Value Policy
for Federal Coal Leasing
Morgan, Lewis, and Bockius
Suite 800
1800 M Street, N.W.
Washington, D.C. 20009

Dear Mr. Alexander:

Thank you for your appearance before the Committee at the oversight hearing on the Linowes Commission Report on March 21, 1984. Your contribution was greatly appreciated.

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United States Senate
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WASHINGTON, D.C. 20510

March 23, 1984

The Honorable Andrew F. Brimmer
Member, Commission on Fair Market Value Policy
for Federal Coal Leasing
Brimmer and Company, Inc.
1804 Corcoran Street, N.W.
Washington, D.C. 20009

Dear Mr. Brimmer:

Thank you for your appearance before the Committee at the oversight hearing on the Linowes Commission Report on March 21, 1984. Your contribution was greatly appreciated.

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United States Senate

COMMITTEE ON
ENERGY AND NATURAL RESOURCES
WASHINGTON, D.C. 20510

March 23, 1984

The Honorable Richard L. Gordon
Member, Commission on Fair Market Value Policy
for Federal Coal Leasing
Pennsylvania State University
204 Walker Building
University Park, Pennsylvania 16802

Dear Mr. Gordon:

Thank you for your appearance before the Committee at the oversight hearing on the Linowes Commission Report on March 21, 1984. Your contribution was greatly appreciated.

For your information, a second day of oversight hearings on the report has been scheduled for Thursday, April 5, 1984, at 11:00 a.m. in Room SD-366. The Department of the Interior and public witnesses will present testimony at that time.

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United States Senate

COMMITTEE ON
ENERGY AND NATURAL RESOURCES
WASHINGTON, D.C. 20510

March 23, 1984

The Honorable Julia M. Walsh
Member, Commission on Fair Market Value Policy
for Federal Coal Leasing
Julia M. Walsh and Sons, Inc.
Suite 490 Washington Square
1050 Connecticut Avenue, N.W.
Washington, D.C. 20036

Dear Mrs. Walsh:

Thank you for your appearance before the Committee at the oversight hearing on the Linowes Commission Report on March 21, 1984. Your contribution was greatly appreciated.

For your information, a second day of oversight hearings on the report has been scheduled for Thursday, April 5, 1984, at 11:00 a.m. in Room SD-366. The Department of the Interior and public witnesses will present testimony at that time.

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Sincerely,

Jim McClure

James A. McClure
Chairman

Enclosures

QUESTIONS FROM THE MINORITY TO BE ANSWERED BY ALL COMMISSIONERS:

Coal Leasing Levels

1. The report states: "The Commission found that the Interior Department since 1981 has tended to dismiss the risks of overleasing and to exaggerate the risks of underleasing federal coal. As a result, the Department has sought to lease too much coal." (p. 498) In view of this conclusion, why is there no recommendation in your report that the Department of the Interior formulate a new scaled-down leasing schedule with reduced leasing targets?

2. Would you agree that public participation must be incorporated into the lease target setting process? If yes, what steps should be taken to achieve this? If no, why not?

3. Would you agree that public participation must be incorporated into the application of unsuitability criteria? If yes, what steps should be taken to achieve this? If no, why not?

4. Would you agree that public participation must be incorporated into the Regional Coal Teams' deliberations? If yes, what steps should be taken to achieve this? If no, why not?

5. The Commission found that there "is already substantial excess capacity in the Powder River Basin and considerable Federal coal available for further development." (p. 130-131) Given this finding, is there any need for leasing new production tracts in this area? If so, please explain why.

6. Throughout your report you cite the lack of development interest in synfuels projects, the low demand for new mines (p. 131), and other factors that lead one to conclude that there currently is not a demonstrated need to expand leasing. Yet, in spite of this economic climate, the Department plans to lease 6 billion tons of recoverable coal in the next year. What is your assessment of this leasing level? Please explain.

7. In your view, what are the reasons that a coal company prefers to have a substantial inventory of undeveloped coal reserves?

8. In your view, what are the reasons that a company would want to acquire additional Federal coal leases if it already holds several developable leases that are not being developed?

9. Although the Commission made some general recommendations with respect to leasing levels, did you come to any specific conclusions about the impact on competition and achieving fair market value of leasing large amounts of coal versus a more moderated leasing schedule?

37-071 O—84——12

Surface Owner Consent

1. In your report you discuss extensively some of the difficulties involved in obtaining surface owner consent (p. 184-189). Yet there appears to be little discussion of the frequent incidence of surface owner transfers that occur between original owners and either coal companies or investors in return for a high fee. Did the Commission address this issue in detail, and if so, what were your conclusions? Specifically, did you evaluate whether a Federal tax should be imposed on the transfers of surface or lease rights? Please explain.

2. You recommend (VII-3) that Congress consider reexamining the need for limitations on payments on surface owner consent. What, if any, evaluations did the Commission make with respect to how such payment limitations would be regulated? Did you consider whether this would result in the illicit exchange of payment at a rate higher than mandated between surface owners and purchasers of consents?

QUESTIONS FROM THE MINORITY TO BE ANSWERED BY CHAIRMAN LINOWES:

General Matters

1. When did you become personally aware of the existence of the additional Inspector General reports?

2. When did you first direct your staff to look into the Powder River sale, the Duck Nest Creek Exchange, and the Meridian Exchange?

3. Was there any outside research conducted by your staff to verify the information submitted to you by witnesses? Who testified at your hearings?

4. On January 30, at a briefing sponsored by the Energy and Environmental Study Conference, you indicated that the 36 recommendations would not be altered during the time taken beyond the original report deadline, but that the body of the report would be changed. Why weren't the recommendations changed in accordance with the changes made to the report? (The changes to the report included a more detailed discussion of the Powder river sale, and the Duck Nest Creek and Meridian Exchange transactions, as well as a harsher critique of the Department's administration of the coal program.)

QUESTIONS SUBMITTED BY SENATOR METZENBAUM TO BE ANSWERED BY CHAIRMAN LINOWES:

1. Mr. Linowes, before you were asked to chair this Commission, were you a consultant to the Interior Department on coal matters?

   -- As I understand it, this Commission was established in the first place to review the Department of the Interior's policies with regard to coal leasing.

      a) Did you consult the Department on those matters before you were named to chair this Commission?

      b) Were Andy Strasfogel and Erick Kaarlela in any way involved in the Commission's staff? Were they also involved as Interior Department staff in the development of a plan to reduce acceptance prices in the Powder River coal sale?

   -- Were there other ties between the Commission and the Department at the staff level? Specifically, what roles were played, both at Interior and at the Commission, by Bill Bettenberg, Bob Nelson, and Don Bieniewicz?

2. Mr. Linowes, last fall you were quoted in the trade paper Inside Energy/with Federal Lands as saying the following:

   "If a seller is willing to sell at a dollar, instead of $100, that's what the willing seller is willing to take. A buyer steps in and buys it for a dollar and it's a bargain to the buyer and the seller is getting it (the coal) distributed. So the definition, therefore, is not just numbers of dollars."

   -- Is that an accurate quote? Is that your view of "Fair Market Value"?

   -- In other words, you believe the government is getting its due if it sells off its coal for $1 a ton because that's what the industry will pay?

QUESTIONS SUBMITTED BY SENATOR METZENBAUM TO BE ANSWERED BY COMMISSIONER ALEXANDER:

1. I am concerned about reports about credibility of the report issued by the Commisssion in light of reports about possible conflicts of interest.

   Mr. Alexander, I have been told that you have done legal and lobbying work for companies having an interest in diligence rules. You have also represented companies in questions about whether railroads can lease coal and whether they can hold stock in excess of $10,000 in a company affected by the diligence rule.

   a) Can you state which companies you have worked for and what your role as a lobbyist has been in any matters related to coal or railroads that are involved with coal companies?

   b) Are you currently on retainer to any such interests?

   c) I noticed in the recommendations that you recused yourself from certain areas involving diligence. Why did you do that?

      -- Did you participate in that discussion before you recused yourself from the vote?

      -- Was the Commission instructed by Congress to review the question of diligence in the first place, or was that done at the discretion of the Commission?

QUESTIONS FROM THE MINORITY TO BE ANSWERED BY COMMISSIONER BRIMMER:

1. Mr. Brimmer, on the recommendation that deals with how to treat pre-1976 leases with respect to diligent development stipulations you recused yourself. On the recommendation of how to treat post-1976 leases, however, the report stated that you were not present for this vote. If you had been present, how would you have voted?

QUESTIONS SUBMITTED BY SENATOR METZENBAUM TO BE ANSWERED BY COMMISSIONER BRIMMER:

1. I am concerned about reports about credibility of the report issued by the Commission in light of reports about possible conflicts of interest.

   Mr. Brimmer, I have been told that you are a member of the Board of Directors of DuPont, which also owns Conoco and Consolidated Coal Company, one of the nation's largest coal companies.

   -- Are you a member of the DuPont Board of Directors?
   -- Are you a member of any other Board?
   -- Does Consolidated Coal lease coal from the Federal Government? How much?

DAVID F. LINOWES
BOESCHENSTEIN PROFESSOR OF POLITICAL ECONOMY AND PUBLIC POLICY
UNIVERSITY OF ILLINOIS

COLLEGE OF LIBERAL ARTS AND SCIENCES
308 LINCOLN HALL
URBANA, ILLINOIS 61801
(217) 333-0670

The Honorable James A. McClure
Chairman
Senate Committee on Energy and
Natural Resources
Room 358
Dirksen Senate Office Building
Washington, D.C. 20510

April 10, 1984

Dear Senator McClure,

Thank you for your letter of March 23, 1984 enclosing questions submitted for the record by members of your Committee. My responses to these questions are attached. It is my understanding, as is implicit in your letter, that responses from the other Commissioners will be sent directly to you.

Should you or any members of your Committee wish to discuss any of my responses in further detail, I shall be most pleased to meet with you.

Sincerely,

David F. Linowes

ANSWERS FROM CHAIRMAN LINOWES TO QUESTIONS FROM THE SENATE ENERGY AND NATURAL RESOURCES COMMITTEE

1. With regard to the conclusion you cite in Question #1, the Commission did address the formulation of a scaled-down leasing schedule with reduced leasing targets. As stated in the report on page 132, "However, based on its assessment of trends and conditions in the market for Federal coal leases, the Commission concluded that the upper range of Interior plans would result in substantially higher leasing levels than are justified. On the other hand, the lower part of the range appears more reasonable. Leasing in this range might result in new leasing of between 3.0 billion tons and 4.0 billion tons of Federal coal over the next two years. The Commission anticipates that this range would allow for the issuance of leases required to maintain existing mines, as well as to permit the accelerated issuance of valid preference right leases and to allow for the entry of new coal producers. The above amounts would result in leasing reductions of 57 percent and 42 percent, respectively, below the maximum competitive leasing levels now being contemplated by the Interior Department."

2. One responsibility of the Regional Coal Teams in the coal management program is to offer recommendations for the setting of lease targets. The States, as members of the RCTs, are a part of this process. Consequently, as being represented by their states, the public and its interests are recognized and they are involved by their States participation.

3. The Office of Technology Assessment (OTA) was given, by Congress, the responsibility to prepare a report regarding the environmental aspects of the coal leasing program. The questions regarding unsuitability criteria are environmental issues and, therefore, fall within the scope of OTA's examination. The Commission, however, did recognize another aspect of "suitability" of tracts, that being selecting the tracts most suitable to attract more bidders and generate more competition. These characteristics of tracts are discussed in Chapter 4 of the report, "Selecting Competitive Tracts."

4. Public participation is incorporated into the Federal Coal Leasing Program through the States' representation of its publics. On page 97 of its report, the Commission "concluded the close Federal cooperation with State and local governments is a desirable and necessary part of the Federal coal program. The States have major, legitimate interests in the management of Federal coal within their boundaries. The management of Federal coal, therefore, must be to some degree a partnership between the Federal government and State governments. Their joint effort should extend to the staff level, as well as coordination among top decision makers. Since much of Federal coal planning occurs through the RCTs, States' participation in the staffing of these teams would be appropriate." In fact, the Commission went on to recommend and encourage the inclusion of State personnel in the RCTs. See Recommendation III-2: "To maintain a responsive and orderly coal leasing process, the States, through their participation in the Regional Coal Teams and the Federal-State Coal Advisory Board, should continue to

play a significant role both in establishing leasing levels and in setting leasing schedules. The inclusion of State personnel in providing staff support to the Regional Coal Teams is encouraged." (page 98)

5. The Commission identified a variety of reasons for leasing coal. Even if there is excess capacity now, there may still be needs to lease coal to maintain existing operations. The fact that it takes from 3 to 5 years to develop a mine must be taken into consideration to allow for flexibility by those in the coal mining industry. Furthermore, the Commission recommends issuance of valid preference right leases (Recommendation III-6, page 135) many of which are located in the Powder River Basin. In addition, the Commission considered it desirable to provide for the entry of new competitors by the leasing of new production tracts.

6. The Commission's assessment of the Interior Department's leasing level of 6.0 billion tons is discussed on page 132 of the report and is cited in the response to Question #1 of this paper. Basically, the Commission found this upper limit to be too high.

7. A coal company needs to have an inventory of undeveloped coal reserves available to supply new production contracts that may arise. Coal companies are unable to predict accurately either when such contract opportunities may occur or what the precise needs will be. Also, the long lead time of 3 to 5 years before actual production begins must play into a company's long term projection plans.

8. A company needs to have diversity in the characteristics of its coal in order to meet demands for potential new contracts. Also, new Federal coal leases may be more economical for a company to mine than the leases currently held by that company. Again, because of the long lead time needed to bring the leases into production, the company must project energy needs at least 10 years from the issuance of the lease. Furthermore, energy needs of our country are expected to rise.

9. The Commission did discuss the impact of leasing large amounts of coal versus a more moderated leasing schedule on Federal government revenues. In its conclusion on page 107, the Commission states, "Based on its overall economic analysis of factors affecting coal leasing revenues, the Commission concluded that high leasing levels will reduce bonus bids for Federal coal leases intended for new mines. The effect on bids for bypass and maintenance leases is likely to be smaller, because diligence requirements pose much less risk of forced relinquishment. High leasing levels will also probably cause the total bonus revenues to the Government to fall, but at a slower rate than individual bonus bids decline, because more leases also are being sold. Moreover, it is possible that Government bonus revenues would not fall much at all as total leasing levels rise. Consideration of royalty impacts of leasing diminishes the risks that high leasing levels would cause substantial long-run deductions in total leasing revenues to the Government."

Surface Owner Consent

1. Yes, this issue was discussed in considerable detail. The discussion regarding this issue and its conclusion may be found in Chapter 7 of the report (pages 344-345). Specifically, the Commission concluded, "that existing capital gains and minimum taxation provide a sufficient level of value gains from lease assignments and surface right transfers. A special new tax directed at lease assignments would tend to depress the value of some leases and also to dampen bidding interest in leases. A new tax on surface right transfers might impede desirable transfers of rights. The Commission, therefore, concluded that new taxes on lease assignments or surface right transfers should not be enacted."

2. In its discussion regarding imposing limitation on payments for consent to surface owners, the Commission identified "enforcement" as a concern to this process. This discussion may be found in the report on pages 304-312. Specifically, "The Commission discussed at some length the possibility of a statutory limit on consent payments to surface owners. As noted above, the Congress debated such limits prior to enactment of SMCRA in 1977. In the Senate a limitation formula was passed although later dropped.....There are major doubts, however, that any such legal requirements to limit surface owner payments could be enforced. It would be very difficult, if not impossible, for the Government to police under-the-table payments. However, a limit solely on royalty payments to consent owners, or their outright prohibition, would be much easier to enforce. Currently, some surface owners, or previous consent holders, are obtaining significant royalties for the mining of underlying Federal coal. The Interior Department does currently limit a surface owner royalty to half the Federal royalty, that is, to 6 and 1/4 percent. Clearly, this is a very generous limit." (pages 311-312)

ANSWERS TO QUESTIONS FROM THE MINORITY TO CHAIRMAN LINOWES

1. I first became aware of the existence of the additional Inspector General reports on January 26, 1984 when they were brought to the attention of the staff by a member of Representative Markey's staff.

2. The staff was first directed to look into the Powder River sale at the Commission meeting on November 28, 1983 (transcript pages 5-18). At their meeting on November 29, 1983, the Commissioners directed the staff to examine the Duck Nest Creek exchange (transcript pages 316-324). On December 22, 1983 the Commissioners clarified all directions for Chapter 9, the case study chapter, directing the staff to address the three transactions which make up the current Chapter 9 of the final report (transcript pages 366-378, specifically page 375 for Meridian and page 377).

3. The Commisssion did not accept simply on face value the testimony of any witness, even though all witnesses, with the exception of members of Congress and governors of States, testified before the Commission under oath. Two firms were contracted by the Commission to undertake independent research and evaluate the substance of the Commission's report based on the material presented. Attached is a list of witnesses who testified before the Commission and the dates of the testimony. This listing appears on pages 549-559 in Appendix D of the report.

4. I did not make that statement.
On January 30, 1984 at the briefing sponsored by the Energy and Environmental Study Conference, I stated that the 36 recommendations were still essentially the same as they were on November 30, 1983. Some word changes for clarification were made and three recommendations were classified as judgments. The three transactions, Powder River, Duck Nest and Meridian, were dealt with as case studies in a separate chapter (Chapter 9). No specific recommendations emerged from the Commission's analysis of these transactions. Conclusions were drawn, as reported in Chapter 9, based on testimony and material presented to the Commission. Conclusions reflect all the information learned by the Commissioners before and after January 30, 1984 and all was used in arriving at our final conclusions.

ANSWERS TO QUESTIONS FROM SENATOR METZENBAUM ADDRESSED TO CHAIRMAN LINOWES

1. Prior to being asked to chair this Commission I had never been a consultant to the Interior Department on coal matters. I had chaired a previous Commission on Fiscal Responsibility of the Nation's Resources and subsequently was asked to consult, from time to time, with the Minerals Management Service in implementing the recommendations of that Commission.

   At no time did I consult with the Department in coal leasing matters. When Secretary Watt asked me to chair this Commission I asked him to send me background materials in order to get an understanding of the issues to be explored so I could examine them prior to making a decision whether to accept such appointment. I reviewed the GAO report, the House Investigations Committee report, the Department's responses and relevant transcript materials.

   Andrew Strasfogel was loaned from the Department of the Interior to work full-time on the Commission staff. He served as a writer and researcher.

   Erick Kaarlela was not a member of the Commission staff. As a member of the staff of the Bureau of Land Management, Mr. Kaarlela testified as a witness. Also, he was helpful in providing the staff resource and reference material for their use.

   Prior to serving on the Commission, Mr. Strasfogel, I am told, had at the most a peripheral involvement with Powder River, clearly not in a policy making position.

   Bob Nelson and Don Bieniewicz were loaned from the Department to the Commission on a full-time basis during the period of the Commission. They served as writers and researchers in preparing material at the direction of the Commissioners. Bill Bettenberg served as Federal Representative, as required by law, to the Commission. He attended all hearings and business meetings and was available to the staff upon request to provide necessary materials. He was not a member of the Commission staff.

2. I never made such a statement, nor do I believe that statement.

APPENDIX D

WITNESSES WHO TESTIFIED AT COMMISSION HEARINGS OR BUSINESS MEETINGS

HEARINGS

September 6, 1983 (Washington, D.C.)

- GENERAL ACCOUNTING OFFICE -

  J. Dexter Peach, Director, Resources, Community and Economic Development Division; Ned Smith, Supervisory GAO Evaluator; Lowell Mininger, Senior Group Director for National Resources

- U.S. DEPARTMENT OF THE INTERIOR -

  Garrey E. Carruthers, Assistant Secretary; Steve Griles, Deputy Assistant Secretary, LAND AND MINERALS MANAGEMENT

  Erick Kaarlela, Chief, Office of Resource Evaluation and Program Development; John Creger, Appraiser, Resource Evaluation Team; Neal Jacquot, Economist, Resource Evaluation Team, BUREAU OF LAND MANAGEMENT

  David Russell, Formerly the Acting Director of MINERALS MANAGEMENT SERVICE

- David A. Gulley, Henry Krumb School of Mines, COLUMBIA UNIVERSITY

550 FAIR MARKET VALUE POLICY FOR FEDERAL COAL LEASING

September 7, 1983 (Washington, D.C.)

- Daniel E. Klein, Principal, ICF INCORPORATED
- Ronald S. Young, Director, Bureau of Accounts, INTERSTATE COMMERCE COMMISSION
- Orren Beaty, Assistant General Manager, WESTERN FUELS ASSOCIATION, INCORPORATED
- Richard W. Sternberg, Fuels Coordinator, NATIONAL RURAL ELECTRIC COOPERATIVE ASSOCIATION
- Martin A. White, President, WESTERN ENERGY COMPANY
- Rod Ford, Manager, Western Exploration; Gary McMaHill, Surface Engineering, CONSOLIDATION COAL COMPANY
- Charles Rech, Manager, MERIDIAN LAND & MINERAL COMPANY
- Terry O'Connor, Director, Rocky Mountain Legal Affairs, PEABODY COAL COMPANY
- Bryan H. Lawrence, Managing Director, DILLON READ & COMPANY, INCORPORATED

September 26, 1983 (Washington, D.C.)

- Brooks B. Yeager, Washington Representative, SIERRA CLUB
- Karl Gawell, Legislative Representative, NATIONAL WILDLIFE FEDERATION
- David Masselli, WESTERN ORGANIZATION OF RESOURCE COUNCILS

Witnesses Who Testified at Commission Hearings or Business Meetings 551

September 26, 1983 (Washington, D.C.) Continued

- James Wilson, President, ROCKY MOUNTAIN ENERGY COMPANY
- Steven P. Quarles, former Deputy Under Secretary, DEPARTMENT OF INTERIOR
- William J. Kollins, Chief, Land Acquisition Section, Land and Natural Resources Division, DEPARTMENT OF JUSTICE
- Karen L. Larsen, Senior Analyst, Industry, Technology and Employment Program; Richard Rowberg, Program Manager, Energy and Minerals, OFFICE OF TECHNOLOGY ASSESSMENT
- Sheridan Glen, Assistant Vice President, ARCH MINERAL CORPORATION, Vice Chairman of the Coal Leasing Committee, NATIONAL COAL ASSOCIATION
- Charles Dietrich, Chairman; Michael Poling, Senior Council for the AMERICAN MINING CONGRESS Committee on the Federal Coal Leasing Program
- Niles E. Grosvenor, Senior Vice President, GATES ENGINEERING COMPANY
- John P. Weir, President, PAUL WEIR COMPANY
- Cyril Jones, Vice President, VICTOR PALMIERI & COMPANY, INCORPORATED

September 27, 1983 (Washington, D.C.)

- Edward J. Markey, 7th District, MASSACHUSETTS

552 FAIR MARKET VALUE POLICY FOR FEDERAL COAL LEASING

September 27, 1983 (Washington, D.C.) Continued

- Dale Bumpers, Senator, ARKANSAS
- August Keller, Director, Energy Development Impact Office, WYOMING GOVERNOR'S OFFICE
- Warren White, Natural Resources Advisor, WYOMING STATE GOVERNOR'S OFFICE
- Laura B. King, NATURAL RESOURCES DEFENSE COUNCIL, INCORPORATED
- L. Geoffrey Webb, Legislative Representative, FRIENDS OF THE EARTH
- Andrew C. Palmer, ENVIRONMENTAL POLICY CENTER

October 25, 1983 (Denver, Colorado)

- Richard D. Lamm, GOVERNOR OF COLORADO
- Ed Herschler, GOVERNOR OF WYOMING
- Toney Anaya, GOVERNOR OF NEW MEXICO; and Paul Biderman, Secretary of Energy and Minerals Department, STATE OF NEW MEXICO
- Laurence I. Moss, ENVIRONMENTAL CONSULTANT
- John W. Dwyer, President, NORTH DAKOTA LIGNITE COUNCIL
- Larry Rutherford, President, BAUKOL-NOONAN, INCORPORATED

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Witnesses Who Testified at Commission Hearings or Business Meetings 553

October 25, 1983 (Denver, Colorado) Continued

- James C. Wilson, President, Rocky Mountain Energy and Chairman of the WESTERN REGIONAL COUNCIL

- U.S. DEPARTMENT OF THE INTERIOR -

  Robert Lawton, Assistant Director for Mineral Resources and Mining Law; Erick Kaarlela, Chief, Office of Resource Evaluation and Program Development, BUREAU OF LAND MANAGEMENT

October 26, 1983 (Denver, Colorado)

- Helen Waller, member and former Chairman and John Smillie member of the NORTHERN PLAINS RESOURCE COUNCIL

- Duane Sebastian, Chairman, DAKOTA RESOURCE COUNCIL

- William Barlow, board member and former Chairman, POWDER RIVER BASIN RESOURCE COUNCIL

- John Huss, Staff Director, Chairman of WESTERN ORGANIZATION OF POWDER RIVER BASIN RESOURCE COUNCIL and Staff Director, POWDER RIVER BASIN RESOURCE COUNCIL

- Chuck Worley, member WESTERN COLORADO CONGRESS

- Pat Sweeney, Regional Director of the WESTERN ORGANIZATION OF RESOURCE COUNCILS.

- Teresa Keaveny, Staff Director, COAL RESOURCE COUNCIL

554 FAIR MARKET VALUE POLICY FOR FEDERAL COAL LEASING

October 26, 1983 (Denver, Colorado) Continued

- Robert J. Deurloo, Vice President; Ted Reutlinger, Regulation Affairs Specialist, Government and Public Affairs Department, NERCO, INCORPORATED

- John R. Hardin, Domestic Land Acquisitions Manager, ANACONDA MINERALS COMPANY

- Roy Coulson, Vice President; David Cover, Pittsburg & Midway Land Department, PITTSBURG & MIDWAY COAL MINING COMPANY

- Lawrence J. Gralla, Vice President of Strategic Planning, AMAX COAL COMPANY

- Alison P. Monroe, Staff Scientist, SOUTHWEST RESEARCH AND INFORMATION CENTER

- Mark Welsh, Program Director, COLORADO OPEN SPACE COUNCIL

- Richard "Zeke" Houk, Coal Geologist, COUNCIL OF ENERGY RESOURCE TRIBES

- Steven H. Chestnut, Legislative Counsel, for the NORTHERN CHEYENNE INDIAN TRIBE

- Clara Spotted Elk, Special Assistant to the Tribal President, NORTHERN CHEYENNE TRIBE

- U.S. DEPARTMENT OF THE INTERIOR -

  Timothy J. Mac Gillvray, Chief; John Creger, Appraiser; Neal Jacquot, Economist; Resource Evaluation Team; Casper, Wyoming;

Witnesses Who Testified at Commission Hearings or Business Meetings 555

October 26, 1983 (Denver, Colorado) Continued

Erick Kaarlela, Chief, Resource Evaluation and Program Development; Phillip Cloues, Chief, Economic Evaluation Section, Denver, Colorado; Kenneth Smith, Coal Program Specialist - Land Use Planning, Activity Planning Regional Coal Team; Rick Hunter, Chief, Branch of Solid Minerals; Dick Wilson, Deputy State Director for Minerals, New Mexico, BUREAU OF LAND MANAGEMENT

- James E. Fassett, Geologist, U.S. GEOLOGICAL SURVEY

November 17, 1983 (Washington, D.C.)

- Sheridan A. Glen, Assistant Vice President, ARCH MINERAL CORPORATION on behalf of the NATIONAL COAL ASSOCIATION and the MINING AND RECLAMATION COUNCIL OF AMERICA

- Paul D. Miller, Senior Vice President, MERIDIAN LAND & MINERAL COMPANY

- George W. Abbott, Attorney

- Joseph E. Lema, Vice President, Transportation, THE NATIONAL COAL ASSOCIATION

- John A. Grygiel, Assistant Vice President of Pricing, THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY

- William F. Baxter, Assistant Attorney General, Anti-trust Division, DEPARTMENT OF JUSTICE

- Richard M. Holsten, Jr., President, Pittsburg & Midway Coal Company, on behalf of the NATIONAL COAL ASSOCIATION and THE AMERICAN MINING CONGRESS

556 FAIR MARKET VALUE POLICY FOR FEDERAL COAL LEASING

November 17, 1983 (Washington, D.C.) Continued

- Harry Perry, Consultant, RESOURCES FOR THE FUTURE

- James J. Buckley, Deputy Assistant Commissioner, Office of Real Property, Federal Property Resources Service, GENERAL SERVICES ADMINISTRATION

BRIEFINGS

August 24, 1983 (Washington, D.C.)

- U.S. DEPARTMENT OF THE INTERIOR -

  Garrey E. Carruthers, Assistant Secretary, LAND AND MINERALS MANAGEMENT

  Robert Lawton, Assistant Director for Mineral Resources and Mining Law; Erick Kaarlela, Chief, Office of Resource Evaluation and Program Development; Walter Rewinski, Mineral Leasing Specialist, BUREAU OF LAND MANAGEMENT

  William D. Bettenberg, FEDERAL REPRESENTATIVE TO THE COMMISSION

  Joseph Doddridge, Director, OFFICE OF ADMINISTRATIVE SERVICES;

  Charles L. Towle, Program Analyst, OFFICE OF POLICY ANALYSIS

  William Murray, Attorney-Advisor, Onshore Minerals, OFFICE OF THE SOLICITOR

Witnesses Who Testified at Commission Hearings or Business Meetings 557

November 9, 1983 (Washington, D.C.)

- U.S. DEPARTMENT OF THE INTERIOR -

Timothy J. Mac Gillvray, Chief; John Creger, Appraiser; Neal Jacquot, Economist; Resource Evaluation Team, Casper, Wyoming; Erick Kaarlela, Chief, Resource Evaluation and Program Development; Orvel Gustafson, former Staff Economist, BUREAU OF LAND MANAGEMENT

Robert W. Beuley, Assistant Inspector General for Auditing, OFFICE OF THE INSPECTOR GENERAL

Maurice Ellsworth, Associate Solicitor for Audit and Investigations, OFFICE OF THE SOLICITOR

Donald R. Tindal, Director; Judge Edward W. Stuebing; Judge Bruce R. Harris, OFFICE OF HEARINGS AND APPEALS

BUSINESS MEETINGS

August 24, 1983
September 6, 1983
September 27, 1983
October 14, 1983
October 25, 1983
November 9, 10, 1983
November 18, 1983
November 28, 29, 1983
December 21, 22, 1983
January 10, 1984
January 16, 1984

558 FAIR MARKET VALUE POLICY FOR FEDERAL COAL LEASING

January 17, 1984 (Washington, D.C.)(Accepted Testimony)

- David B. Corman, President; Linda S. Rathbun, Vice President of Market Research, BXG, Incorporated

- John P. Weir, President, PAUL WEIR COMPANY

January 27, 1984 (Washington, D.C.)(Accepted Testimony)

- David Masselli, WESTERN ORGANIZATION OF RESOURCE COUNCILS

- U.S. DEPARTMENT OF THE INTERIOR

  Erick Kaarlela, Chief, Resource Evaluation and Program Development; John Creger[1], Appraiser; Neal Jacquot[1], Economist; Resource Evaluation Team, Casper, Wyoming; Phillip Cloues[1], Chief, Economic Evaluation Section, Denver, Colorado; Jules MacKallor, Senior Economist, BUREAU OF LAND MANAGEMENT

  David Russell, former Acting Director of MINERALS MANAGEMENT SERVICE

- Robert W. Beuley, Acting Inspector General; James M. Yohe, Assistant Inspector General for Audit and Investigations, OFFICE OF THE INSPECTOR GENERAL

- Larry G. McBride, Assistant Solictor-Onshore Minerals, Division of Energy and Resource, OFFICE OF THE SOLICITOR

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1. Testimony accepted via telephone conversation.

Witnesses Who Testified at Commission Hearings or Business Meetings 559

January 28, 1984 (Washington, D.C.)(Accepted Testimony)

- U.S. DEPARTMENT OF THE INTERIOR

  Garrey Carruthers[1], Assistant Secretary, LAND AND MINERALS MANAGEMENT

  Erick Kaarlela, Chief, Resource Evaluation and Program Development; Walter Rewinski, Mineral Leasing Specialist, BUREAU OF LAND MANAGEMENT

- David Masselli, WESTERN ORGANIZATION OF RESOURCE COUNCILS

- Steven P. Quarles, MERIDIAN LAND and MINERAL COMPANY

February 1, 1984 (Washington, D.C.)

February 8, 1984 (Washington, D.C.)

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1. Testimony accepted via telephone conversation.

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April 13, 1984

The Honorable James A. McClure
Chairman
Committee on Energy and Natural Resources
Washington, D. C. 20510

Dear Mr. Chairman:

In response to your letter of March 23, the following are my answers to the questions to all Commissioners and to me specifically:

Coal Leasing Levels

1. The Commission did conclude that a lower leasing schedule was advisable. Personally, I thought the schedule should, apart from preference right leases, be even lower than the 3 billion to 4 billion tons mentioned on page 132 of the Report.

2. I thought the public already participated in the process of setting lease targets.

3. Same answer as No. 2. Also, this is largely an environmental matter.

4. Same answer as No. 2. Also, see pages 362-364 of the Report. In other words, I think there is ample opportunity now for public participation. I think our recommendations, if adopted, will improve the process, and I think that continued public participation is an essential part of it.

5. Even with excess capacity, new leasing is needed. We recommended issuance of preference right leases; we thought it desirable to permit new competitors to enter the field, and we took into account long lead times for developing mines.

6. See answer No. 1.

7. A coal company needs to have a substantial inventory in order to meet the needs of prospective customers. Also, it may find that it is more economical to develop a new lease than to continue production at an old one. Furthermore, there is substantial lead time for commencing production.

8. See answer No. 7.

9. See pages 98-108 and Appendix H of the Report.

Surface Owner Consent

1. Responding to the specific question, transfers of surface or lease rights are already subject to federal tax, and no additional tax should be needed. See pages 344-5 of the Report.

2. See pages 304-313 of the Report for our discussion of this difficult issue. Enforcement of any such limitation would not be easy.

Senator Metzenbaum's Questions

1. I acted on behalf of Bechtel Power Company in connection with H.R. 1010 and S. 267, providing for the grant of the right of eminent domain to coal slurry pipelines. H.R. 1010 was defeated in the House of Representatives on September 27, 1983 by a vote of 235 to 182.

2. I recused myself in all areas where I thought I might have an actual conflict of interest or there might be a perception of conflict of interest. Page 518 of the Report points out that I recused myself from a vote and discussion of the recommendation dealing with the statutory requirement of diligence.

The initial Congressional instructions with respect to the Commission were limited to a review of procedures, the Interior Department's charter of the Commission was broader, and later instructions to the Commission by Congress were broader. All these are set forth on pages 5-7 of the Report.

Very truly yours,

Donald C. Alexander

/alt

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ANDREW F. BRIMMER
President

July 12, 1984

Honorable James A. McClure
Chairman
Committee on Energy and Natural Resources
United States Senate
Washington, D.C. 20510

Dear Senator McClure:

I am responding to the questions posed in your letter of March 23, 1984, which followed from my appearance before your Committee on March 21, 1984, as a Member of the Commission on Fair Market Value Policy for Federal Coal Leasing. I will respond to the questions in the order in which they were raised.

Questions from the Minority to be Answered by All Commissioners:

1. The Commission did address the issue of "... a new scaled-down leasing schedule with reduced leasing targets." See Report, pp. 132-133.

2. I do not agree. The Secretary of the Interior has - and should retain - the authority to set leasing levels.

3. I do not agree - for reason stated in No. 2.

4. No. The degree of official, state participation that now exists is sufficient.

5. There is need to lease new production tracts in the Powder River Basin. The reasons supporting this position are given on pp. 133-34 of the Report.

6. The Commission's assessment of the Interior Department's projected leasing levels is presented on pp. 132-133 of the Report. I share that assessment.

7. I have no view with respect to this question.

8. The same response applies.

9. No. I reached no specific conclusion with respect to the issues raised.

Surface Owner Consent

1. The Commission's discussion of Surface Owner Consent is presented on pp. 184-189 of the Report. I have nothing further to add.

2. I did not participate in any discussion of ways to limit payments on Surface Owner Consent.

Questions for A. F. Brimmer

If I had been present, I would have recused myself with respect to post-1976 leases.

Questions from Senator Metzenbaum to A. F. Brimmer

1. I am a Member of the Du Pont Board of Directors.

2. Yes. I am a Member of other Corporate Boards.

3. Consolidation Coal Company (a subsidiary of CONOCO - and of Du Pont) does lease coal from the Federal Government. How much - I do not know.

Sincerely yours,

Andrew F. Brimmer

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College of Earth and Mineral Sciences
Department of Mineral Economics

Area Code 814
865-2549

April 2, 1984

Mr. Gary Ellsworth
Room SD-358
United States Senate
Committee on Energy and Natural Resources
Washington, D. C. 20510

Dear Mr. Ellsworth:

As requested, here are my replies to the minority questions to the Commissioners. I have included comments on some questions to Lingowes since I feel views other than his are needed.

I would also like to note that I found Donald Alexander and Andrew Brimmer models of probity and devotion to the public interest. They clearly led the effort to tighten the extent of leasing. The cause of good government is ill-served if the motives of able people are continuously subjected to unfair criticism. It is bad enough that those who voluntarily take full time government jobs are subjected to excessive criticism. It seems even more inappropriate to subject those who were importuned to participate in a supposedly part-time activity, that proved in practice to be extraordinarily time consuming, to similar probing. It creates considerable reluctance to provide future assistance.

Sincerely yours,

Richard L. Gordon
Professor of Mineral Economics

RLG:tf

Enclosure

Coal Leasing Levels

Question 1

Basically the premise of this question is invalid. The Commission did recommend a reduction in leasing targets. As I suggested in my testimony before the Committee, I accepted the principle of reduced leasing targets as a short-term way to proceed, given the need of Interior to improve its capability for handling a large volume of leasing. I would emphatically add that this was based on the premise on which our Commission study was based that policy should involve a greater effort to insure receipt of fair market value. Given that the minority members predominantly come from coal consuming states, they should recognize that a danger of lesser leasing and obsession over fair market value is that they will make coal more expensive for their constituents.

Question 2

The present system of undertaking leasing or other energy actions is already far too complex and state government participation should more than suffice. My experience on the Commission confirmed what follcwing from afar had suggested--that what passes for public interest participation is often unconstructive obstructionism.

Question 3

Similarly, there are too many exclusions of mining and too many ways to obstruct leasing.

Question 4

Again, I feel that the so-called public participants will do more harm than good at this stage.

Question 5

This, too, was answered in my oral testimony. We cannot be sure that all the best tracts have been leased.

Question 6

On the basis of Secretary Clark's response to the Commission, he can be expected to adjust leasing levels appropriately.

Question 7

All mineral firms necessarily need an appropriate inventory of undeveloped reserves to meet emerging demands given the long lead times in completing mines. It is not a matter of preference but economic necessity.

Question 8

Because the new reserve is better than the old ones.

Question 9

It is quite clear that the more that is leased the greater will be the competition in the market for coal. The degree of competition in the market for coal leases has little to do with leasing levels. As my written statement notes, the effect of high leasing levels on fair market value is far smaller than critics of high leasing contend.

Surface Owners Consent

The Commission found a clear conflict between the desire to protect surface owners and the desire to insure receipt of fair market value by the federal government. We could not find a satisfactory way to resolve the conflict. We were told of the danger that a limit on explicit payments could be evaded. Such discussion of taxes as occurred recognized that taxing was only a possible instrument of control. The problems of appropriate limits or evasion of controls are not less under a tax.

Comments on the Selected Questions to Chairman Linowes

Given the disagreement with the way Chairman Linowes ran the Commission, I feel others should comment on selected questions, namely the last two from the minority in general and parts of Senator Metzenbaum's first question.

As far as Question 3 is concerned, the list of witnesses is in our report. Despite my continued opposition from late September on, the staff was set immediately to work drafting position papers and draft reports and never allowed to provide the synthesis and appraisal of data that I and other Commissioners requested.

As far as Question 4 is concerned, Linowes was speaking for himself and the rest of us considered the recommendations open to change up to the last minute. We certainly tried to alter the recommendations to account to the receipt of the two Inspector General's reports.

As far as Senator Metzenbaum's question is concerned, four DOI men were seconded to us as full time staffers--Andrew Strasfogel, Robert Nelson, Donald Bieniewicz and Theodore Heintz. From working with them closely, I can attest they brought excellent technical skills and scrupulous devotion to sound, truthful analysis. Mr. Bettenberg was the statutorily required federal representative. He proved a candid, scrupulously balanced representative and greatly aided the process of developing a sound unbiased report. In short, all five were civil servants of the highest order of whom the United States should be proud.

Mr. Kaarlela was in regular attendance at our meetings as a representative of the Bureau of Land Management. He did often volunteer information--often of great use. At times, he did overstep his bounds as an observer and said more than was appropriate. Linowes tended, in this and other cases (most notably in the January 27 testimony of David Masselli), to be slow to call such people to order. Thus, while the Commission clearly could distinguish among itself, its staff, and outsiders, the conduct of meetings often must have confused spectators about the roles being played.

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July 31, 1984

The Honorable James A. McClure
Chairman
Committee on Energy and Natural Resources
United States Senate
Washington, D. C. 20510

Dear Senator McClure:

I submit herewith the answers to the questions you posed in your letter of March 23, 1984, to the members of the Commission on Fair Market Value Policy. Please excuse my long delay but due to circumstances and misunderstanding on my part that you wanted replies from everyone on the commission, I have been inordinately tardy.

Question 1: The Commission did, in fact, make a recommendation that they limit the amount of coal to be sold in the next few years. We did not put an actual amount on it, but did outline the parameters in which the Department of Interior should also set the maximum number that would represent a definite scale-down.

Questions 2, 3, & 4: The matter of public participation, I believe, is a rather difficult and tedious procedure. I felt, particularly, that the public participation should be at the regional levels since regions vary so much. In light of Question 4, I believe the public should be included in regional commissions that would participate in the various items, such as in Question 3, possibly through ad hoc committees or on-going commissions that would participate more formally in any of these issues.

Question 5: With reference to this question, the only justification one can make for continuing to develop the Powder River Basin is to give the industry time to do some long range planning in light of the fact that it does take some time to get a new plant up and running and adequate time is needed for that purpose.

Question 6: As indicated in Question 1, while we have recommended that the amount be very much reduced, we do feel it is necessary to have some ongoing program in order to establish some continuity of supply. These sales would serve as a basis for comparable sale prices on new leases in determining the fair market price.

Question 7: I believe that coal companies do prefer to have a substantial inventory as part of their long term planning because historically the economy has been inflationary, so they want to build up inventories as early as possible. However, we strongly recommended that the time to develop the resources should be limited, and penalties should be imposed if companies fail to bring the product to market within a reasonable period of time. This would keep the coal market adequately supplied, and the numerous sales would give the Government better comparable pricing statistics in determining fair market pricing on pending leases.

Question 8: As to Question 8, I repeat I believe that they desire to acquire additional Federal coal leases as part of the long term planning matter, because of the long lead time it takes in putting a mine into operation.

Question 9: There was some feeling on the part of the Commission that at least moderate leasing was desirable in order to establish value for pricing. However, that could be done on a more moderate lease level. (Refer to Question 7)

As to the question on Surface Owner Consent, we did not address this problem in depth, but I believe administratively some procedure could be established here by the regional coal commission putting some administrative parameters on the way surface owner consents are priced. I see no problem with taxing the leases for capital gains as any capital gains would be taxed or for that matter even a transfer tax.

Sincerely yours,

Julia M. Walsh
Member
Commission on Fair Market
Value Policy for Federal Coal
Leasing

JMW:jp

APPENDIX II

Responses to Additional Committee Questions Submitted by the Department of the Interior

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THE SECRETARY OF THE INTERIOR
WASHINGTON

May 25, 1984

Honorable James A. McClure
Chairman, Committee on Energy and
Natural Resources
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

Enclosed please find responses to questions submitted to the Department following my appearance before the Senate Energy and Natural Resources Committee on April 5.

I hope they respond to your needs. If you need further information, please let me know.

Sincerely,

William Clark

Enclosures

QUESTIONS SUBMITTED BY THE MINORITY FOR SECRETARY CLARK

QUESTIONS ON COAL LEASING LEVELS

Question: 1. The Commission concluded "that the Interior Department since 1981 has tended to dismiss the risks of overleasing and to exaggerate the risks of underleasing Federal coal. As a result, the Department has sought to lease too much coal." (p. 498)

- Mr. Clark, would you agree with this conclusion?

- If yes, do you intend to scale down the level of coal leasing in the next several years?

- If you do not agree, please explain why.

Answer: The Commission and I agree that continuation of the coal program is in the national interest and that it must be built on a national consensus. The program meets a number of purposes including reducing energy dependence while conserving total energy resources and protecting the environment. In implementing this program, the government needs to be flexible with regard to the timing of lease sales and the quantity of coal offered so that emerging market conditions are appropriately considered. Further, it must base its decisions on an evaluation of a series of indicators designed to estimate future needs.

My response to the Linowes Commission provides a comprehensive framework within which responsible decisions can be made regarding future coal lease sales. With the restructuring of the Department's process, specific leasing decisions will be made closer to the time of the actual sales, if any occur. As part of the final decision process, the criteria used in setting regional leasing levels will be reexamined. In addition, the Bureau of Land Management will fully evaluate the proposed offering to determine how the most recent economic or other considerations affect the proposed sale. This evaluation will consider relevant market conditions. The evaluation will be made a part of the record of decision for the tracts identified for sale and will be the first detailed specification of potential tract offerings. Hence, the decisions made will be based on the most recent analysis of economic and related data.
The same factors will be evaluated immediately prior to publication of the sale notice. If this evaluation indicates that the offering is no longer appropriate, the offering will be changed.

Because of the ongoing study of the program and due to the development of the new guidelines and procedures, I am not in a position to say how much coal will be leased in the next several years. However, the Department will continue its planning for possible sales and will be in a position to hold regional sales, if determined necessary, in 1985 and beyond.

Question: 2. OTA asserts that the Department's pre-sale planning process would be improved, if unsuitable tracts were dropped at an early stage from the process so that planning efforts could be focused on few tracts.

- Mr. Clark, in evaluating the Department's procedures for determining the size and timing of sales, did you consider using a process in which unsuitable tracts are dropped from the planning process at an early stage.

- If so, what did you conclude in your evaluation?

Answer: The OTA report on Environmental Protection in the Federal Coal Management Program has not been completed. When it becomes available to the Department, we will review OTA's findings and respond within 45 days.

Question: 3. Mr. Clark, in your review of the Commission's report, you said that you would provide the Federal-State Coal Advisory Board with a draft national schedule for their review. On March 19 the Board's charter expired.

- Has the Department taken any steps to renew this charter?
- If so, what are they?
- When do you expect the charter to be renewed?
- When do you plan to give the Board a draft of the national leasing schedule for their review?

Answer: A new draft charter for the Federal-State Coal Advisory Board has been prepared to reflect the board's expanded role outlined in my March 19 response to the Linowes Commission. This draft is being sent to the affected Governors and State Directors for their review. I expect the charter will be filed with the appropriate congressional committees by mid-September 1984 and the board members should receive a draft of the national planning schedule this fall.

QUESTION:

4. The Department's coal leasing philosophy is based on industry's demand for reserves. Prior to 1982, the leasing program was based on leasing to meet the estimated demand for production.

-Have you considered the effect on leasing levels of your departmental philosophy?

-If so, what did you conclude?

-Have you considered leasing according to a more moderate philosophy?

ANSWER:

The change from leasing to meet production needs to leasing to meet market demand was a logical extension of experience gained. The shortcomings of leasing to meet production needs, specifically of not providing for the unknown future resource needs, had been recognized and addressed prior to the coining of the phrase, "demand for reserves". Under the production goals approach to leasing, the Department and Regional Coal Teams (RCT) added on a "security factor" to avoid the shortcomings of leasing to meet production needs.

The Department's underlying coal leasing philosophy for the past 5 years has been to offer the amount of coal which would avoid harmful distortions in the coal market while at the same time ensuring that development of the coal leased would not cause significant adverse socio-economic or environmental impacts. The problem then arises of how to implement this philosophy.

The Linowes Commission recognized the lack of guidelines in this area and recommended that sale decisions reflect the current market conditions and expectations, not the leasing level planning range. In the March 19, 1984, response to Congress, I promised that a proposal for additional market analysis and the guidelines to utilize that analysis will be published by the end of August, 1984.

It should be reiterated that the leasing levels identified by the RCT's were intended to be used only as planning tools, specifically for analysis in the EIS. The implications of a forecast of how much coal should enter the activity planning process for a sale 2 years away versus how much should be offered in a sale 2 months away will obviously differ.

Question: 5. Would you agree that greater public participation must be incorporated into the lease target setting process?

- If yes, what steps will you take to achieve this?

- If not, why not?

Answer: The Department of the Interior believes that public participation is necessary in all aspects of the Federal coal management program. The principal mechanism of Federal-State cooperation, the Federal-State Coal Advisory Board and its subsidiary Regional Coal Teams (RCT) will play an expanded role in developing long range planning schedules and in recommending leasing levels to the Secretary of the Interior.

The Department will continue to work with the Federal-State Coal Advisory Board and the RCT's. The Advisory Board may make recommendations on long-range (5-year) coal lease sale schedules, and the RCT's will regularly be given data on the emerging market conditions in the coal regions in order to improve their recommendations on leasing levels to the Secretary. The Department will encourage State staff support for the RCT's and will consider technical analyses and professional opinions of State personnel.

The RCT's also serve as the major mechanism for public participation in the Federal coal management program. The RCT's have open meetings at which public comments are solicited, and members of the public are kept apprised of all RCT activities through Federal Register notices, attendance at meetings, and the like. Further, the Department will consider authorizing the RCT's to use news letters to communicate with the public.

Many of the proposals arising out of the Secretary's March 19, 1984, response to the Commission report will be available for public review and comment in the next 6 months. All comments received will be considered in any changes made in the program.

Question: 7. Would you agree that public participation must be incorporated into the Regional Coal Teams' deliberations?

- If yes, what steps will you take to achieve this?

- If no, why not?

Answer: We most definitely believe that public participation must be an essential part of the Regional Coal Team (RCT) deliberations, and it has been our practice to provide for such participation. The charter of the Federal-State Coal Advisory Board contained several requirements involving the public; requirements for Board and RCT meetings are:

- all meetings open to the general public
- publication of a notice in the Federal Register and a news release to the media, announcing each meeting
- establishment of the specific times and places for the public to be heard
- permitting any organization, association or individual to attend, file a statement with or appear before a team.

As you can see, these requirements very clearly made public participation an objective of the RCT meetings. Because we support this objective, the new charters for the Board and each RCT will contain these same requirements.

Additionally, we are considering the use of RCT Newsletters to inform the public of RCT deliberations and recommendations. Other opportunities for public involvement and dissemination of information will also be explored.

Question: 8. The Commission found that there "is already substantial excess capacity in the Powder River Basin and considerable Federal coal available for further development." (p. 130-131)

- Given this finding, is there any need for leasing new production tracts in this area?

- If so, please explain why.

Answer: There will be no leasing of new production tracts until after December 31, 1984. As has been previously indicated in the Department's response to the Commission, we will, at that time, have developed the criteria to assess the most recent economic and other relevant market conditions that affect a proposed sale. This will provide a rationale for the decision as to what tracts will be considered for future lease offerings in the Powder River Basin.

Under this assessment procedure, leasing of new production tracts in the Powder River Basin will be evaluated. As noted by the Commission ". . . new leasing may be needed to fill out existing operations or to complete new mine sites that are only partially assembled. In addition, new leasing may be needed to make available potentially higher quality coal with lower mining costs." (p. 131) The intent is to provide the least costly coal to the consumers and thus prevent unnecessary inflationary impacts. Leasing of new production tracts serves this purpose by increasing the competition of coal producers for utility and other coal use contracts.

Additionally, a wide inventory of available new production tracts allows for the introduction of new technology, i.e. synfuels, that ultimately may decrease dependence on foreign sources of energy. As noted in the Commission report "restrictions on new mine openings imposed by mid-1970's litigation, led to development of mines that in some cases were not the most economic" (p. 131) and as such were inflationary and not in the national interest.

QUESTIONS TO SECRETARY CLARK FROM THE MINORITY

LONG-RANGE AND SHORT-RANGE PLANNING AND DECISION-MAKING PROCESS

Question: 1. In your discussion of determining a lease-sale schedule, you have emphasized the role of the States, the regional coal teams, and the public in establishing the long-range planning schedule. However, you make no mention of the role of these parties in the critical decisions to be used just before the sale.

- Will it be your policy to reserve discussion with and decision on tracts to be offered for sale, total tonnage to be offered, and lease terms and stipulations to only those individuals within the Department?

- Is it your intention to exclude States and the public from these critical decisions?

- If not, what method are you proposing to insure that parties outside the Department have a role in these decisions?

- Do you believe the determination of what to lease is, by necessity, consensus-building process, and how will your new compressed decision process build that consensus?

- Is such centralization of decision-making in accord with the Commission's findings?

- Do you believe that the problems with the coal leasing program over the past several years which were identified by the Commission are traceable to the failures of the Department's field personnel or are they failures of the Interior officials in Washington, D.C.?

Answer: The coal management regulations (at 43 CFR 3420.4) require that before making any regional coal lease sale decision, I seek the advice of several officials: the Attorney General, the Governors of affected States, any surface management agency outside of the Department, and any affected Indian tribes. I intend to discuss with these officials whether a sale is needed, and if so, what tracts to offer, how much tonnage, and under what stipulations.

The States will not be excluded, as the Governors will be specifically and individually consulted on a variety of matters in each regional lease sale decision. The public has several opportunities to participate in these decisions, through comments on the environmental statement and oral or written comment to the regional coal teams. One of the factors I will rely on is the RCT final recommendation. There is an opportunity for the public to make its wishes known to the RCT during the public comment period, a permanent item on any RCT agenda. I fully intend to retain this opportunity for public participation.

Question 1 (continued)

I believe the final determination of whether to offer Federal coal for lease sale, and if so, what to offer, must be made only after a great many steps and after consultations with affected parties. I intend that the Department carry out its coal lease program responsibly. The final decision process will be expanded, not compressed, and will include a market analysis immediately prior to the publication of a sale notice.

Linowes Commission recommendation III-2 advocated that the regional coal teams retain a significant advisory role in establishing leasing levels and in setting leasing schedules. We concurred with this recommendation and made several proposals to enhance the role of the regional coal teams and the Board. I expect to pay considerable attention to the advice and recommendations of both of these groups.

QUESTIONS TO SECRETARY CLARK FROM THE MINORITY

ROLE OF THE STATES

Question: 9. Western governors have suggested that, subject to gubernatorial-secretarial consultation, final leasing decisions should be made by the regional coal teams, of which the Department maintains a majority of members. The governors have further suggested that your representative chair the RCTs to provide the RCT with the Secretary's views of what is in the national interest.

- Does your recommendation that the RCTs retain only an advisory role mean that you reject the governors' suggestion to decentralize coal leasing decisions?

- Will RCTs be called upon to publicly review all the data from BLM and others in the period just prior to the lease-sale and provide you with their recommendations on what tracts to offer, how much coal to lease, and lease stipulations or will these decisions be left to Interior personnel in Washington, D.C.?

Answer: The Regional Coal Teams (RCT) are advisory bodies and fall under the purview of the Federal Advisory Committee Act. As advisory bodies, they cannot be delegated decision-making authority. Nonetheless, I will rely on them heavily for advice and counsel and they will play an integral role in the leasing process. Their role is explained in detail in the answers to questions 7 and 8. Further, the Department will continue to consult directly with the Governors as required by the regulations and at any other time that may be appropriate.

Prior to an RCT recommending a lease sale schedule, the team will receive the most recent run of the National Coal Model for its use. As has been the case, the RCT's recommendation will be developed at a public RCT meeting and will be considered in the decision process. The Governors will also be consulted before the final decision on lease offering is made.

The RCT's will be called upon for advice immediately prior to a sale. The factors considered and outlined in the record of decision for final tract selection will be evaluated immediately prior to the publication of the sale notice which occurs about 30 days before the sale date. If this evaluation and the advice received demonstrate that the offering is no longer appropriate, the Department will change the offering.

Question: 2. You state that in your review of coal leasing levels you will apply "the appropriate national perspective to the individual regional leasing levels to assure that the appropriate coal being considered for offer is consistent with the national interest."

- How will you determine if a leasing level is in the national interest?

- Is it your intention to reserve your views on what levels of leasing are consistent with the national interest until the final review before the sale determination?

- What, if any, review and comments on your finding of national interest will be provided to the States and citizens in the region impacted by your decision?

- How will your review and determinations of the national interest vary from that conducted by Secretary Watt?

Answer: The market analysis and regional coal production forecasts that the Washington Office will be providing to the RCT's are based on both national and regional data and models. This information will be provided for long range scheduling on an annual basis, for determination of leasing levels at the beginning of activity planning, for sale decisions after completion of the EIS, and at the time of publication of the sale notice. Any of this information will be available on request at any other time. Any conflicts between regional and national needs will be resolved by consensus between the RCT's and the Department to the fullest extent possible.

QUESTIONS TO SECRETARY CLARK FROM THE MINORITY

FEDERAL-STATE COAL ADVISORY BOARD AND RCTs

Question: 1. You note that the contributions of the regional coal teams and the Federal-State Coal Advisory Board are extremely important. On March 19, the Department let the charter for the RCTs and the Advisory Board expire.

- The expiration of the advisory board charter brings to a halt the execution of those coal leasing responsibilities which RCTs have to perform under the regulations. How long will this new hiatus in lease sale-planning last?

- In the effort to reestablish the advisory board charter, will the Department consult with State members before submitting the new charter?

Answer: As explained in the response to Question 3, we are revising the charter to reflect the expanded role of the Board and Teams that was outlined in my March 19th response to the Linowes Commission report. We expect to have the charter in place by mid-September. In reestablishing the advisory board and the RCT's, the State Governors will have the opportunity to review and discuss the charter before it is completed.

QUESTION:

2. The Advisory Board has twice made recommendations on the appropriate methodologies for determining leasing levels, and advice has not been accepted. In your response to the Commission's work, you appear to ignore the advice of the Board that two of the methodologies for determining leasing levels -- the inventory method and the contracting method--be given low priority and used only at the discretion of the RCT.

Is this an oversight?

ANSWER:

The Department agrees that the referenced methodologies may be used at the discretion of the RCT.

The basic philosophy of the Department is that there is no one indicator that provides all the information required for determining the proper leasing levels or the proper amount of coal to offer at a lease sale. The Commission completely agreed with this philosophy.

The measuring of market demand is at best an inexact science. As such, every bit of information, data and analysis that can be collected is beneficial. The Department recognizes the shortcomings of each of the six leasing level methodologies, not just the two objected to by the Federal-State Advisory Board. Both of the methods that were objected to provide useful information in spite of their shortcomings. However, the Department is not forcing the RCT's to use the "objected to" methods or any methodologies if they choose not to. The Department does require the Bureau of Land Management to conduct the analysis so the information will be available for the RCT and Department's use.

How these methods are utilized to determine the way future resource demand will be assessed was noted in the Secretary's March 19, 1984, response to Congress. By December 31, 1984, the Department will have reevaluated the procedures for sale scheduling, leasing levels, and lease offerings.

QUESTION: 3. The Federal-State Coal Advisory Board has recommended that after the final environmental impact statement (EIS) is completed, the regional coal teams (RCT) should receive the most recent runs of the National Coal Model prior to making their recommendation to the Secretary on how much coal and which tracts to lease.

- Wouldn't the Board's recommendation accomplish most of what you are trying to do in compressing the lease-sale decision schedule without excluding the States and the public from the decision process?

ANSWER: The Department has already started providing up-to-date runs of the National Coal Model (NCM) to the RCT's for their recommendation of the sale decision. In keeping with the Commission's recommendations and already evolving plans in the Department, the Department will be providing the NCM runs as well as more current market analyses to the RCTs upon completion of the final EIS.

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QUESTIONS TO SECRETARY CLARK FROM THE MINORITY

ROLE OF THE EIS

Question: 1. You say that ". . . at the time of tract selection, the Department will select a preferred leasing alternative. This alternative will be chosen from among the equally weighted alternatives identified in the earlier coal activity planning and EIS stages."

- Your proposal not to identify a preferred alternative in the EIS appears to be contrary to the CEQ regulations (40 CFR 1502.14) which state that agencies shall". . . devote substantial treatment to each alternative considered in detail including the proposed action, so that reviewers may evaluate their comparative merits." Please explain your interpretation of the regulation.

- How do you propose the public, State, and Federal agencies comment on the EIS if they are not informed of the proposed action until the time of tract selection?

- Is it your intention that Department officials in Washington, D.C. will identify the preferred alternative? If so, that would be contrary to the agreement your predecessor made with western governors? This is embodied in the coal leasing regulation (43 CFR 3420) which states that the regional coal team will identify a preferred alternative.

- Why would you propose to abandon this agreement?

Answer: All changes proposed in the March 19, 1984, response to the Commission recommendations are recommendations and are subject to public comments and further study after those comments are received.

The proposal identified by this question would, if adopted, delete reference in the coal leasing rules to a preferred alternative in the environmental impact statement (EIS). Instead, the rule would require the Department to identify the proposed action, which would be to lease within the leasing level range, and would identify several other alternative tract combinations, some being within that range, and others above and below that range. All alternatives would be studied equally and fully in the EIS. Members of the public, State Governments, and other Federal agencies would be able to continue to comment on the proposed action, together with all alternatives, presented in the EIS. The Secretary would select those tracts to be offered at the time of the lease sale decision, after considering the final environmental impact statement, then-current market conditions, social impacts, and other factors, as well as the results of consultations with State Governors (see 43 CFR 3420.4-3(a) and (c)), the Attorney General, and others.

(continued)

Question: 1. p. 2

The Department of the Interior's manual has always implemented the CEQ's regulations by requiring Departmental EIS's to identify a "proposed action" when studying internally generated proposals. The Department's proposal is consistent with the Departmental manual, which was approved by the Council on Environmental Quality.

Whether or not this proposal is adopted, the regional coal teams will continue to recommend combinations of tracts for study in the environmental impact statement. As is now the case, the Secretary will carefully consider the final environmental impact statement and any regional coal team recommendations on the lease sale in determining the amount of coal, if any, to be leased.

This regulatory change is being proposed to eliminate the public perception that the proposal in a draft EIS, which under the current rule is labeled the "preferred alternative," is equivalent to the final lease sale decision.

QUESTIONS TO SECRETARY CLARK FROM THE MINORITY

GENERAL QUESTIONS

QUESTION: 1. Please provide the Committee with an estimate of recoverable tons of State, Indian, fee and railroad-held coal.

ANSWER: An estimated 60 percent of the western coal reserves, approximately 165 billion tons of demonstrated coal reserves, are under Federal ownership. The remaining 40 percent, approximately 110 billion tons of demonstrated coal reserves, are State, Indian and fee ownership. Beyond these crude estimates of reserves no data has been collected.

Question: 2. Please provide the Committee with the Department's schedule or flow chart (if available) for addressing the various categories of issues related to the coal leasing program; for example, the schedule for proposed changes to define new production, maintenance, and bypass tracts; intertract bidding guidelines; public comment on new bidding techniques; promulgation of the new rule establishing minimum bid; public comment on establishing negotiated lease sales; comment on appraisal of non-competitive tracts, and all other activities related to the reorganization of the coal leasing program.

Answer: Attached are the latest draft flow charts showing the schedules for all of the Department's tasks in the coal program review.

PRELIMINARY DRAFT

COAL PROGRAM REVISIONS IMPLEMENTATION SCHEDULE

April, 1984

NO. 5

ADMINISTRATIVE ACTIONS

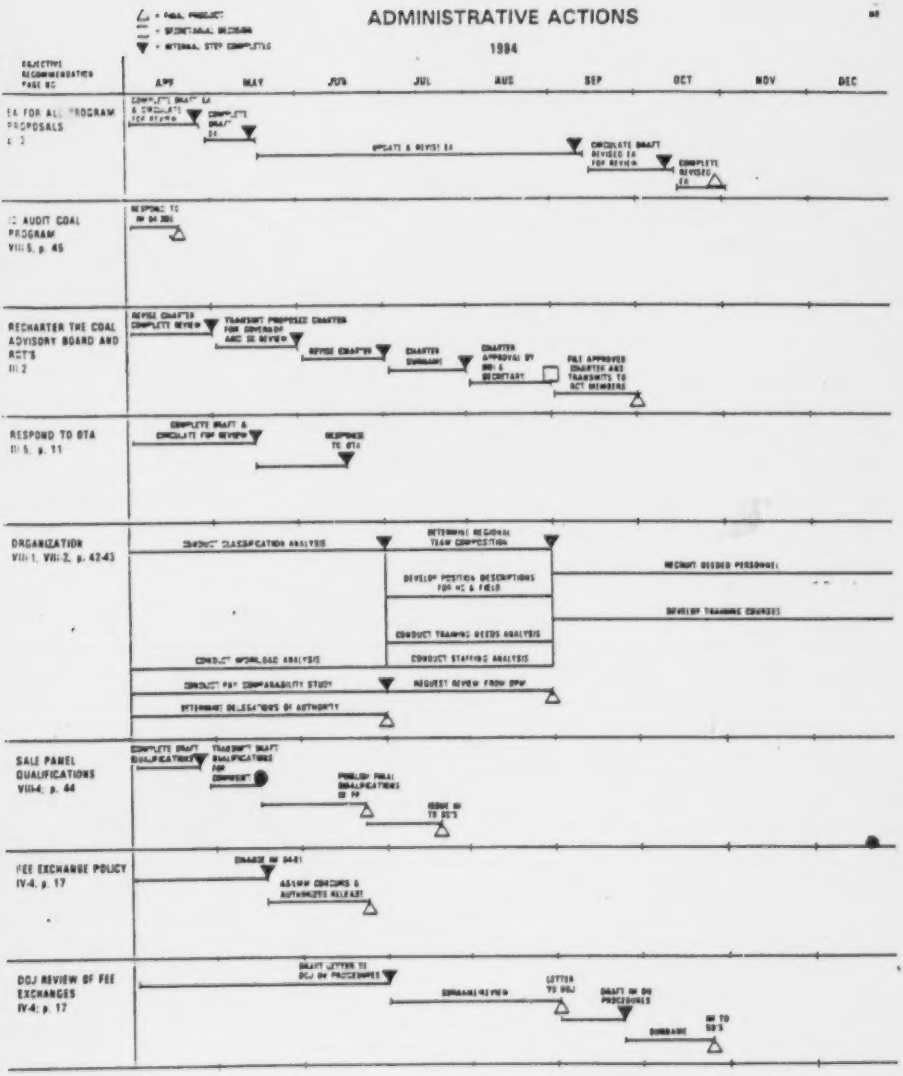
APPRAISAL PROCEDURES

TRACT DELINEATION

SALE PROCEDURES

MARKET ANALYSIS

REGIONAL SALES/PRLA'S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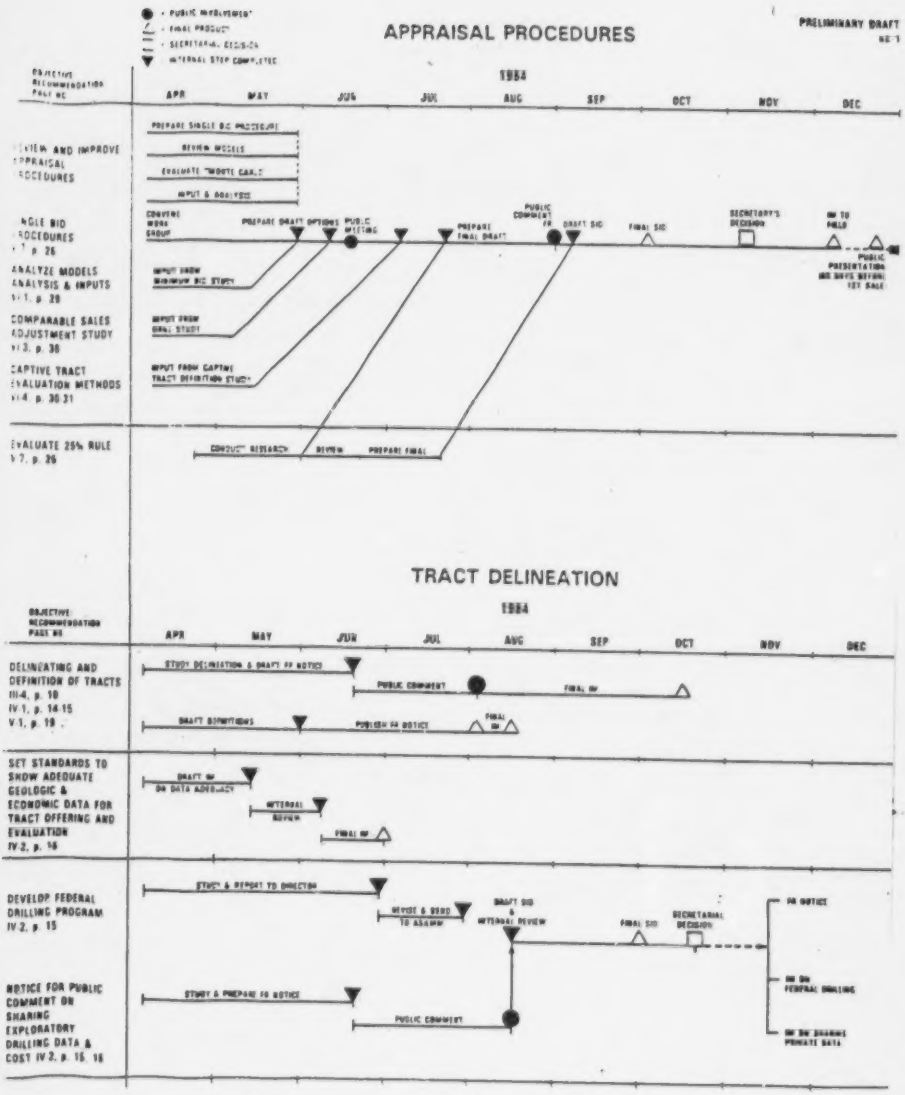
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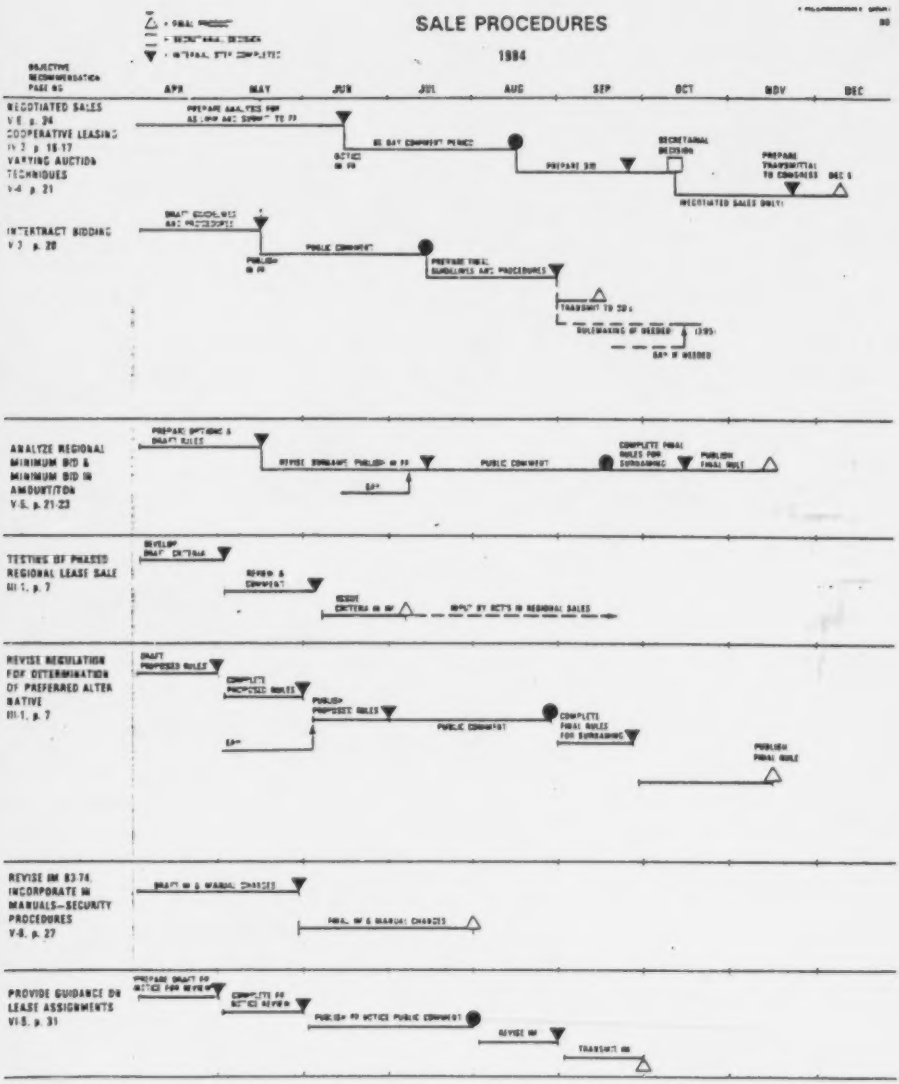
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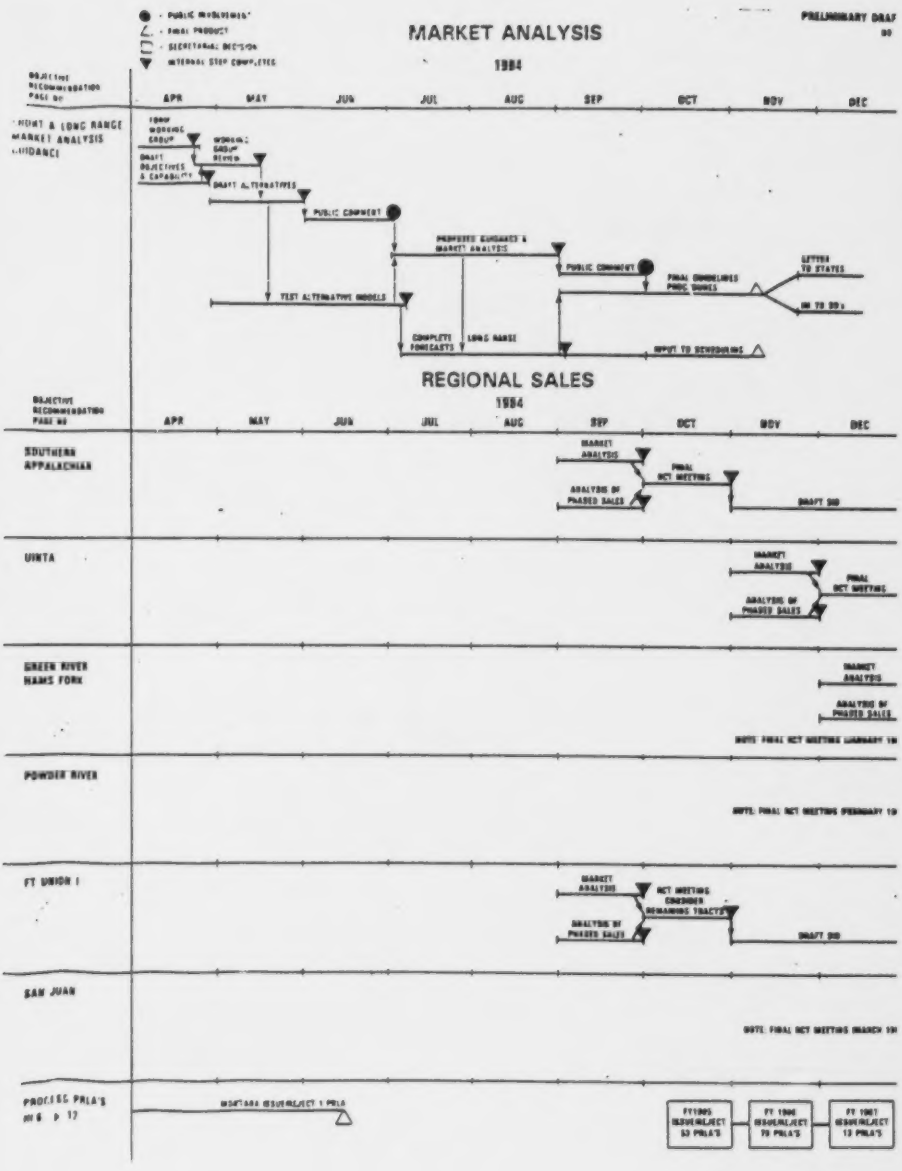
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QUESTIONS SUBMITTED BY SENATOR BUMPERS FOR SECRETARY CLARK

GENERAL QUESTIONS ON COAL LEASING

Question: 1. The Department has responded to each of the Commission's recommendations and has proposed new procedures which incorporate all but one of the recommendations.

Can you tell the Committee in general terms how your coal leasing program, based on the Commission's recommendations, will differ from the previous program?

Answer: My proposed procedures incorporate almost all recommendations made by the Commission. They provide a comprehensive framework within which responsible decisions can be made regarding future lease sales. These proposed procedures would restructure the Department's planning process to permit decisions to be made with fuller information and closer to the times of sales.

The proposed procedures provide long-range stategic planning guidance for the public concerning goals of the program based on best available estimates of future events. They provide for close consultation with State and local governments through the Federal-State Coal Advisory Board and Regional Coal Teams, throughout the process.

The procedures are designed to sharpen mechanisms for selecting tracts and for conducting lease sales. Building on the Commission's general recommendations, we propose specific procedures which will generate increased competition. Nonetheless, as the Commission recognizes, there will be a large number of tracts which will receive only a single bid because of land ownership patterns. Accordingly, we are developing alternative procedures which, if enacted by the Congress, would allow the Department to negotiate the sale price of those tracts.

The proposed procedures incorporate the Commission's recommendations for validating the Department's appraisal methods. Prior to issuance of the Commission's report, the Department had contracted with the Colorado School of Mines to assess appraisal methods. Completed before the Commission made its report, the assessment concluded the Department's appraisal methods were similar to those used by industry and were appropriate. Also, the Oak Ridge National Laboratory is studying the Department's use of specific variables in appraisal processes. When this analysis is complete, the Department will finalize and publish a statement of its coal lease appraisal method, as recommended by the Commission.

(continued)

To assist in implementing the proposed program, the Department has established, in the Bureau of Land Management, a centralized coordinating group for policy and analytic guidance, as proposed in the Department's Fiscal Year 1985 budget request. The formation of such a group was endorsed by the Commission. We also will implement plans to place greater reliance on regional teams with local representation, as proposed by the Commission.

The Department will sponsor more government drilling and will encourage private sector drilling to enchance the data base. Tracts will not be delineated or selected unless there is adequate knowledge to evaluate potential trade-offs and will not be offered for lease unless there is adequate coal data to appraise the tracts value.

I have also instructed BLM to identify and aggressively pursue cooperative leasing opportunities. Similarly, the BLM is to pursue and evaluate possible fee exchanges to consolidate Federal coal holdings.

We will also take steps to enchance our appraisal capability, including increasing the number of mineral appraisers, improving the professional capabilities of those currently employed, and considering the use of private sector appraisers. OPM will also be asked to study pay comparability and the possibility of treating minerals professionals as a shortage-occupation category.

Question: 2. I understand that the Department will not hold a major lease sale in 1984.

Is that correct?

When do you anticipate scheduling a sale?

Answer: By December 31, 1984, the Department expects to have in place a decision-making process which will enable us to make a responsible determination as to whether specific proposed sales are desirable. Until then, I have decided that only emergency and/or by-pass leases and preference right leases may be issued. Of course, Colstrip C and Colstrip Maintenance Tracts may also be leased, as authorized by the FY 84 Appropriations Act.

As a result of the Departmental review and the Commission's report and recommendations, the Department is proposing significant changes in its long range and short term planning process. These changes are designed to ensure that final decisions are made closer to the time of the actual sale. Initial designations of coal leasing levels made as part of the long range plan will be treated as tentative, and will not have the solidifing effect experienced in the past. For future sales, more definite and specific plans will be formulated as part of the lease sale schedule decision.

The long range schedule will remain an important planning tool. It will ensure predictability by establishing parameters within which industry and other interested parties can plan. However, under these proposed procedures less emphasis will be placed on leasing levels at the early stages of the schedule. Levels developed in the early steps of the long range plan would be in the broadest range that permits planning and environmental analysis for National Environmental Policy Act compliance. Moreover, the actual timing of a sale will become dependent on the Secretary's decisions that initiate the final lease sale schedule. These decisions will be made when tracts are selected for offer.

This major shift in emphasis will add flexibility to the leasing process. Progressively greater specificity will be built into the overall sale schedule at the time of tract selection. Hence, the actual timing of the sale, the tonnage, and the tract selections will be based on the most recent analysis of economic and related data.

QUESTION: 3. Although no coal sales will be held in FY 1984, the Department has not submitted a revised budget for the coal program to Congress to reflect the new leasing schedule, and the FY 1985 budget request shows only a slight decrease from the 1984 level for coal leasing.

ANSWER: Complying with the Secretary's response to the Linowes Commission Report, we will not be able to establish a sale schedule until after December 31, 1984. While there will not be sales in FY 1984, land use and activity planning will continue. The actual sale is only a small percentage, less than 1 percent, of the actual cost of processing to the point of holding the sale. Activity plans, and other activities will be on-going in preparation for future leasing activities regardless of whether an actual sale is held in FY 1984.

We are presently studying the work and costs associated with the implementation of the Commission recommendations. While funding is sufficient to continue land use planning and the other activities previously discussed, implementation of the Commission recommendations may require additional funds.

QUESTIONS FOR SECRETARY CLARK ON COAL LEASING

QUESTION: 1. The Linowes Commission's report criticizes the Department's projected leasing levels as being excessive, and recommends a significant reduction in the volume of reserves offered for lease in the next two years. The report suggests leasing between 3 and 4 billion tons over the next two years including reserves contained in preference right lease applications (PRLAs) (p. 132-134).

Do you agree that 3 to 4 billion tons (including PRLAs) is a more reasonable leasing goal than one orignially developed by the Department for the next two years?

Specifically, how will the program revisions you are implement ing change the way in which leasing levels are determined?

Can you give the Commission an example of a proposed lease sale in which you will significantly reduce the volume of reserves offered?

ANSWER: The Department is committed to a thorough reevaluation of the status, including the PRLA development potential, of the outstanding Federal coal leases and applications. Also future Federal lease offerings will be viewed from a regional perspective and responding to the dynamics of the market. Future lease offerings will be based on this additional information and a recognition of the market dynamics.

The original range of leasing levels studied for the San Juan River, Uinta-SW Utah, Green River-Hams Fork and Powder River Regions totaled 2.6 to 6.75 billion tons of recoverable reserves. In formulating these leasing levels the Regional Coal Team (RCT) considered potential production from PRLA's but the leasing level ranges do not include potential leasing from PRLAs.

The establishment of the regional leasing levels by the Secretary, after receiving recommendations from the RCT and advice from the governors of the affected States, is for the purpose of establishing a range which will become the proposed action in the EIS. The quantity of coal to be offered for lease in the sales that were planned for FY 1984 and FY 1985 was not established.

The Department did, however, make estimates of the anticipated sales for the San Juan River, Uinta SW-Utah, Green River-Hams Fork and Powder River regions. The Department projected that 2.7 billion tons would have been sold in the four regions. These estimates did not represent a policy position or a decision, but only estimates based on best available data. The Department also made estimates on the quantity of coal that was expected to be leased from outstanding PRLA's. The Department

estimates that 1.5 billion tons, of the estimated 6.8 billion tons of recoverable reserves contained in the outstanding PRLA's, will meet final showing and be in production in time to meet the diligent development requirements. This is also not a policy position of the Department but the best available estimate.

Throughout the leasing process, the Department has purposefully avoided establishing leasing goals. To establish a goal early in the process restricts future options. In each step of the process the quantity of coal is reduced. An example of this step effect was the Fort Union sale. The original Fort Union leasing level used in the EIS was .72 to 1.08 billion tons of recoverable reserves. The Department decided to offer an estimated .93 billion tons. However, due to environmental, surface owner and administrative issues, the actual quantity of coal offered for lease was .54 billion tons. In the September 14, 1983, sale, of the 115 million tons receiving bids, bids on only 103 million tons were initially accepted.

This example also points out the error in assuming the planned leasing level is the leasing goal. One of the leasing goals is to satisfy the market demand for coal. In this case the demand was for 115 million tons, not 1.08 billion tons or .93 billion tons or .54 billion tons.

Although the previously presented anticipated sales figures in no way represent a leasing goal, they are estimates of the market's response to the future sales. The anticipated sale figure of 2.7 billion tons plus the PRLA estimate of 1.5 billion tons is probably more representative of what the Linowes Commission's report was suggesting. The report suggests 3 to 4 billion tons should be leased. The Department's estimates would total 4.2 billion tons being leased in that timeframe. Given that market demand is very hard to measure , and goals even harder, a difference of 200 million tons is not a significant difference. Also, with a phased leasing approach and the delays in processing the outstanding PRLA's, the timeframe used in estimating the 4.2 billion tons is longer than the 2 years using by the Commission in arriving at the 3 to 4 billion tons.

The specific changes to the procedures for determines sales schedules, leasing levels and leased offerings have not been developed. These changes will be implemented by December 31, 1984. Any procedures that are adopted will continue to utilize a market analysis, including the six (6) factors cited on page six (6) of the Review of Federal Coal Leasing, March 19, 1984, recommendations from the RCTs and advice from the affected State Governors. The procedures will also include long-term market forecasts early in the process and eventually using specific short-term forecasts just prior to any proposed lease sale.

The specifics of individual lease sales have not been formulated and will not be developed until the new procedures are adopted. All lease offering decisions will be made in coordination with the RCT. Lease offering decisions for San Juan River, and second round sales in Uinta-SW Utah, Green River-Hams Fork and Powder River regions had not been made under the old or revised procedures.

Question: 2. As you know, the Department's coal leasing program has been based on a policy of leasing sufficient coal to meet industry's demand for reserves. This is in contrast to a previous policy of offering coal to supply the nation's demand for coal production.

The Commissions's report criticized the new policy:

> "The stated desire to meet industry needs for coal reserves suggested a greater concern for private industry interests, and less for the public interest". (p. 494)
>
> The Interior Department since 1981 has tended to dismiss the risks of overleasing and to exaggerate the risks of underleasing Federal coal. As a result, the Department has sought to lease too much coal." (p.498)

Do you agree with the Commission's criticism that leasing for the industry's demand for reserves "suggests a greater concern for private industry interests and less for the public interest"?

Do you agree that this policy has resulted in overleasing, and increased the difficulty of obtaining fair market value for Federal coal leases?

Do you intend to change this policy?
Wouldn't a return to leasing based on production needs satisfy concerns about overleasing, speculation, and receipt of fair market value?

Answer: See response to Question 4.

QUESTION: 3. On page 535 of its report, the Commission states that "leasing large amounts of coal may, in and of itself, cause the Secretary to fail to meet the statutory requirement" for fair market value.

Would you agree that leasing levels for Federal coal are constrained to some degree by the fair market value requirement?

Do you agree with the Commission's statement?

How will the Department consider the statutory requirement to obtain fair market value in its determination of appropriate leasing levels?

ANSWER: In the market for western coal reserves, as in all market situations, there is a price/quantity relationship. The market for western coal reserves also has the added factor of one participant (the Federal Government) being able to disrupt this price/quantity relationship. A proper quantity of coal is being offered if we conclude that there is at least enough coal to meet market demand. This requires the government to recognize its ability and responsibility to reject bids below the market price.

To avoid potential problems associated with extremely large lease offerings, the Department in the future will test smaller phased sales subject to recommendations from each RCT. This will allow the Department to gradually test the market and gain needed information on market demand and price.

QUESTION: 4. The Commission recommended that the "quantity of coal leased should be determined to ensure that the government receives fair return consistent with the achievement of other public policy objectives...". In its response, the Department "recognizes that the Commission deliberately chose to use the term fair return rather than fair market value". The Department's response states "this term clearly implies that the goals of the program go beyond maximizing revenues and encompass other national concerns.

Do you agree with the statutory requirement to obtain fair market value for coal leases?

How do you define fair market value?

Does this definition mean something different for Federal coal than it does for privately held coal, or for State leases?

ANSWER: The Department recognizes its responsibility to obtain fair market value in coal leasing and will continue to try to achieve that objective. Fair market value is at best a difficult term to define and even harder to quantify. Fair market value does not mean maximizing revenue. Rather, it is the amount of compensation a willing seller would receive from a willing buyer in an open market transaction. This definition is consistent with and is based on the definition of fair market value found in the private coal market. This definition does not, however, lend itself to any easy quantitative analysis.

Question: 5. The Commission's report recognized the need to process pending PRLAs quickly and to include the reserves contained in these leases in calculations of new leasing levels. The Department's response notes that 137 PRLAs are still outstanding, and may contain as much as 7 billion tons of recoverable reserves.

What is the Department's schedule for processing all remaining PRLAs?

The Department has been criticized in the past for a lack of thoroughness in processing PRLAs, for failing to examine the validity of the original prospecting permits upon which the PRLAs are based, and for failing to consider the costs of environmental mitigation in determining the commercial viability of a Preference Right Lease. Have you taken steps to ensure that the remaining PRLAs will be properly examined before leases are approved?

The Commission recommended a leasing level of 3 to 4 billion tons over the next two years, including reserves contained in PRLAs. Why shouldn't the Department simply refrain from offering any new production tracts for lease until all PRLAs can be carefully processed?

Answer: A copy of the Department's schedule for processing PRLAs is attached (Table 1).

PRLAs have been examined to ensure that they were acquired in accordance with the Mineral Lands Leasing Act of 1920 and the implementing regulations. Further, guidance has been issued to the Bureau of Land Management State Directors to ensure that the costs of environmental mitigation are considered in the commerical quantities test (Instruction Memorandum 83-822, attached).

Federal coal sales are determined on regional needs. Since all regions do not have substantial coal reserves in PRLAs (e.g. Uinta-Southwestern Utah and Green River-Hams Fork Regions), it may be necessary to offer additional coal resources in these regions to meet demand. Even in those regions having large numbers of PRLAs with substantial recoverable reserves, there may be a need for offering additional reserves. Any new regional competitive leasing in these regions must, however, reflect possible production from PRLAs; leasing levels will be established which fully consider anticipated development and production from PRLAs.

Table 1

PRLA Processing Completion Dates

State	FY 84				FY 85				FY 86				FY 87				Remarks
	1	2	3	4	1	2	3	4	1	2	3	4	1	2	3	4	
Alaska (2)											2						
Colorado (17)					7	2	7	8	1				1[1/]				
Montana (4)				1												3[2/]	
New Mexi (26)					26												
Utah (12)				1			1									12[3/]	Court reinstated 6 additional prospecting permits, which, if meeting initial showing, will be included with these; same EIS as Uinta III.
Wyoming (76)					6	6			14	7	43						IBLA 83-571 upheld Peabody appeal on 6 PRLA's prev. rej. by WSO
Total (137)			1		34	8	3	8	15	7	45	3	1			12	

1/ Consol PRLA - special wildlife study will delay EIS.
2/ Funding withheld for processing 3 PRLA's overlapping wilderness study areas (WSA's)
3/ Funding withheld for processing 7 PRLA's overlapping WSA's; remaining PRLA's must to be processed with 7 in suspense.

IN REPLY REFER TO:
3430(641)

United States Department of the Interior

BUREAU OF LAND MANAGEMENT
WASHINGTON, D.C. 20240

September 9, 1983

Instruction Memorandum No. 83-822
Expires 9/30/84

To: All SD's

From: Director

Subject: Processing of Coal Preference Right Lease Application (PRLA) Final Showing

In order to promote uniform application of existing rules for coal PRLA processing, the following guidance is offered:

Request for Final Showing: Upon completion of the environmental assessment (EA) or environmental impact statement (EIS) on a PRLA or group of PRLA's, the Bureau of Land Management (BLM) will request from the applicant a final showing as specified in 43 C.F.R. 3430.4-1, unless the necessary information as specified below has already been submitted. The request for final showing will include a copy of the proposed lease, including any additional special stipulations or lease terms developed as a result of the environmental analysis conducted pursuant to the National Environmental Policy Act (NEPA).

Requests for final showings have already been sent to many preference right lease applicants following completion of an EA. In some cases, a decision has since been made to prepare an EIS to cover certain of these PRLA's. Until you find, upon completion of any pending NEPA work, that the earlier request for final showing accurately reflects conditions discussed in the final NEPA document, and the stipulations to be imposed on the lease as a result of the final environmental analysis, it should be treated as a "preliminary" request since it was sent before the completion of the environmental analysis required by 43 C.F.R. 3430.3-2. The information contained in these "preliminary" final showings currently on hand should not be used for any evaluation purposes if new requests for final showings are necessitated by additional lease terms or stipulations resulting from subsequent environmental work. The information is not to be released to any party except as provided in the section on confidentiality below. If, after the final EIS is filed, additional lease terms or stipulations are to be imposed, the affected applicants are to be sent a new, complete request for final showing. The new request for final showing will allow the applicant the normal period of time to respond as provided at 43 C.F.R. 3430.4-1(c).

All requests to applicant for final showings should, at a minimum, include the following:

1. The proposed lease form, including the applicable rental and royalty rates and any proposed stipulations.

2. A copy of the EA or EIS on the application, including a map or maps showing all areas subject to specific conditions or protective stipulations because they have been assessed or designated to be unsuitable for all or certain stipulated methods of coal mining, or because of other identified values.

3. A list of the information which the applicant should submit. The list should include enough items to ensure that the Bureau has sufficient data to enable it to evaluate the PRLA. At the minimum, these items should be requested:

   (a) Estimated recoverable coal reserves (quantity and quality) and number and density of drill holes

   (b) Mining method and expected rate of development

   (c) Estimated revenues, including

   - price of the coal when sold, both delivered price and FOB mine price

   - the rationale for the price(s) estimates, i.e., whether based on contract prices or comparison with comparable coal currently being sold or on expectations of future prices

   - the location and type of expected purchasers of the coal

   - the expected use of the coal

   - the quantity of coal expected to be sold for each use and location.

   (d) Estimated costs, including

   - the estimated costs of developing the mine, removing the coal, and processing the coal to make it salable

   - type and method of financing, debt/equity ratio, projected rates of return

- applicable rents and royalties (including overriding royalties and any other payments from production or profits) and Federal, State, and local taxes

- transportation method and transportation cost projections, including any costs which the applicant expects to bear

- costs of complying with the proposed lease terms and special stipulations. The final showing should indicate the methods that the applicant expects to use to comply with the terms and stipulations. The applicant should itemize the expected costs of complying with each special stipulation.

4. If the applicant intends to mine the deposit covered by a PRLA as part of a logical mining unit, the applicant shall include the estimated revenues and costs of the combined mining venture.

5. Notice that the applicant may withdraw any lands from the application and delete them from final showing in accordance with 43 C.F.R. 3430.4-1(d) or 43 C.F.R. 3430.4-1(e).

6. Notice that the applicant is encouraged to provide detailed explanations and rationales in support of all assumptions and figures to aid the authorized officer in determining the reasonableness of the information provided.

Additional Information: If an applicant has timely submitted some, but not all, of the information listed in the request for final showing, or if the applicant has submitted unreasonable or implausible information, the authorized officer should ask the applicant by registered mail to provide the specific information that is lacking or unacceptable. The applicant will be given 60 days from the receipt of the request to submit the additional information. The authorized officer may grant one 60-day extension if the applicant files a written request within the first 60-day period.

Final Showing: The authorized officer must decide whether the information submitted by the applicant fulfills all the information requirements of the regulations. If, after the request for additional data, the applicant still has not submitted all the data required by regulation within the time limit provided, the application must be rejected. If the applicant does submit all the data required by regulation, the authorized officer must determine whether the applicant has shown that coal exists in commercial quantities on the applied for lands.

A determination of the existence of commercial quantities of coal in the lands under application is a finding by the authorized officer, based on data submitted by the applicant, that "a prudent person would be justified in further expenditure of his labor and means with a reasonable prospect of

success in developing a valuable mine." 43 C.F.R. §3430.1-2(2) (1982). For example, a prudent person would be justified in further expenditure of his labor and means in an area without transportation facilities for coal if such facilities are expected to be constructed and coal shipped without eliminating a reasonable prospect of success in developing a valuable mine. In other words, the authorized officer must find that the applicant has presented evidence of "a reasonable expectation that the revenues from the sale of the coal shall exceed the cost of developing the mine and extracting, removing, transporting, and marketing the coal [consistent with environmental stipulations and applicable laws and regulations]." 43 C.F.R. § 3430.1-2(b) (1982).

The commercial quantities test shall consist of:

1. A determination that the applicant has reasonably estimated the quality and quantity of coal for all beds which are cumulatively economic to mine consistent with the maximum economic recovery requirements of the regulations.

2. A determination that the anticipated mining operation has a reasonable prospect of producing the amount of coal needed to meet minimum production standards under the Federal Coal Leasing Amendments Act of 1976, and in accordance with the maximum economic recovery requirements of the regulations.

3. A determination that the applicant's proposed method of operation and reclamation is in conformity with all applicable laws, regulations, and lease stipulations.

4. A determination that all applicable costs and revenues have been considered in a reasonable manner.

5. A determination that the conditions or protective lease stipulations assure that environmental damage can be avoided or acceptably mitigated (43 C.F.R. §3430.5-3(c)).

6. A determination that, when all of the above have been verified, the applicant has a reasonable prospect of producing coal at a royalty rate of 12 1/2 percent for surface mines and 8 percent for underground mines at a profit.

The determination of a reasonable expectation of profitability must be based on a complete analysis and evaluation of the information submitted in the final showing.

One of the following methods should be used:

- Comparison with comparable situation/operations. This method is preferred and should be used if at all possible. The PRLA tract should be compared, if possible, with a similar tract which has been mined profitably, or is being developed for mining. If, after any needed adjustments to provide comparability, the prospects for mining the PRLA tract compare favorably with the tract that has been mined profitably or is under development, then this would be prima facie evidence that a prudent person would be justified in further expenditures of labor and means with a reasonable prospect of success in developing a valuable mine. On this basis the authorized officer can determine that the applicant has demonstrated the existence of commercial quantities.

- Income test using a discounted cash flow method. This method should be used if a comparison with comparable operations is not possible. The PRLA tract will be evaluated using an acceptable analysis or technique. The revenue and cost information submitted in the final showing will be analyzed by using the discounted cash flow method. If the evaluation indicates that the PRLA tract has a reasonable prospect of being profitably mined, then the determination can be made that the applicant has demonstrated the existence of commercial quantities.

Documentation: The Bureau's receipt, analysis, and evaluation of the final showing must be fully documented. A complete and detailed report of the staff analysis and evaluation of the final showing which provides a point-by-point discussion of each aspect of the commercial quantities test itemized above must be provided to the authorized officer. This report will include all necessary confidential and proprietary data needed to support the decision fully. The report must also include a comprehensive discussion of the appraisal and evaluation methodology and models used to determine commercial quantities, and support for the reasonableness of both the information relied upon and the determination itself. The documentation must also include a cover memorandum which states that "based on the analysis and evaluation of the information submitted by the applicant and other available data, commercial quantities of coal have (or have not) been discovered on the prospecting permit lands within the terms of the prospecting permit." This cover sheet should not contain any confidential or proprietary data or any other information which cannot be released to the public.

The authorized officer shall prepare a Record of Decision (ROD) which will include all data submitted by the applicant in the initial showing which has been put into the public domain (in the EA or through FOIA requests), all nonproprietary data submitted by the applicant in the final showing, and all analyses and evaluations of the final showing which are not confidential.

Information which has been released in EA's may be incorporated by reference. Specifically, the costs of mitigation and reclamation are to be included to the extent permitted. The standards for determining whether or not information is proprietary are set forth below.

Security of Proprietary Information: The final showing documents supplied by an applicant under 43 C.F.R. 3430 will be held secure by the BLM to the extent permitted by the Freedom of Information Act (FOIA). Information in final showing documents that are "trade secrets and commercial or financial information obtained from a person and privileged or confidential" may be withheld from FOIA requesters under exemption (4) to the disclosure requirements of the FOIA. 5 U.S.C. § 552b(c)(4) (1976). Commercial and financial information not classified as confidential must be made available to the public.

The Office of the Solicitor has concluded that where PRLA's are pending or have been granted, portions of the final showings may be withheld from public disclosure as confidential commercial and financial information under exemption (4) to the FOIA. Those portions that may be withheld are primarily the detailed numbers provided in the final showings. Release of detailed financial and commercial data which would give competitors valuable insight into the applicants' plans and anticipated expenses for operating the proposed mines and the return on the sale of coal from the proposed mines necessary to show profits is not required. This information could be used by competitors to undercut the applicants' marketing and pricing strategies for developing the proposed mines. Where PRLA's have been denied it will be necessary to consider whether release of detailed information in the final showings is likely to cause the applicants substantial competitive harm with regard to other mines that the applicants may operate.

However, some portions of the final showings are not information which, if disclosed, would be likely to result in substantial competitive harm to the applicants and therefore may not be considered confidential. Those portions include introductory sections and general descriptions of factors for which numbers have been estimated. Standing alone the general descriptions are of limited value to competitors because without the numbers, the descriptions do not provide significant insights into the applicants' operations. Such general information, where reasonably separable, must be released to FOIA requesters.

In the event of an FOIA request, the FOIA officer will follow established procedures in contacting the submitter of information to give views on the extent to which information should be kept confidential. If information is determined to be nonproprietary a reasonable time will lapse before information is released so that submitters can pursue judicial remedies to stop the release. The same procedures should be used in determining what information submitted by the applicant should be incorporated into the ROD.

should you have any questions on the evaluation procedure, contact Erick Kaarlela, Office of Resource Evaluation and Program Development (641), FTS 343-4537. Questions on proprietary and confidential data are to be addressed to the Freedom of Information Act Officer (130), FTS 343-5717.

The temporary "moratorium" on the processing of coal PRLA's initiated on May 7, 1983, and extended indefinitely on June 9, 1983, is hereby revoked.

James M Parker

Associate Director

Question: 6. Recommendation V-6 in the Commission's report would give the Department authority to negotiate prices for leases when efforts to obtain bidding competition for them fail. The Department's response agrees with the recommendation in principle but recognizes the potential difficulties in implementing it. The Department plans to solicit public comment on a variety of methods for negotiating prices for captive tracts.

Do you interpret the Commission's recommendation for negotiating prices to apply to new production tracts as well as to bypass and maintenance tracts?

If a new production tract receives no competitive bids, or no bids that constitute fair market value, why should it be leased at all? Why shouldn't the government, rather than some company, hold that tract in reserve until such time as it becomes attractive to a producer?

Answer: The implementation of the Commission's recommendation on negotiated sales for Federal coal leases is now under study in the Department. Nevertheless, our initial conclusion is that the Commission did not intend negotiation to apply to new production tracts but only to captive bypass and maintenance tracts.

The Department would certainly consider holding new production tracts in reserve if, when initially offered, the new production tract received no bids representing fair market value. In fact, under the present regulation at 43 CFR 3420.6, the Secretary must consult with the regional coal team and the affected State Governor before reoffering coal lease tracts offered through the regional coal leasing system.

Periodic analyses of market conditions in the coal industry should greatly reduce the likelihood of offering tracts for which no bids will be received. These analyses will occur at the following points in the process: at the time when the draft long range planning schedule is presented to the National Coal Advisory Board; at least once each year; in developing the coal leasing level range during activity planning; at the time of tract selection as part of the record of decision; and, finally, just prior to the posting of the coal lease sale notice.

QUESTIONS FOR SECRETARY CLARK FROM SENATOR TSONGAS

Question: 1. On page 13 of your report, you indicate that the pending Preference Right Lease Applications need to be processed in "full and complete compliance with the National Environmental Policy Act."

- Does this indicate any substantive changes in the Department's plans for handling these PRLAs?

- Have you identified any problems with the Department's handling of these applications?

Answer: In June 1983, the Bureau of Land Management (BLM) reviewed all NEPA compliance documents for pending PRLAs. As a result of that review, the BLM Director decided that environmental impact statements must be prepared on a regional or areawide basis for the majority of pending PRLAs. Only 14 of the 137 pending PRLAs were exempted from the Director's decision. Eight of the 14 PRLAs were already included in a comprehensive environmental impact statement for the Savery Project, Wyoming, and 6 other PRLAs, near Rock Springs, Wyoming, were addressed in a detailed environmental analysis. Both documents fully satisfied NEPA requirements. My statement on page 13 does not alter the BLM Director's decision on NEPA compliance for PRLAs; it merely reinforces the commitment that the environmental effects of PRLAs will be fully considered.

QUESTION: 2. On pages 8 and 9 of your report, you detail the methods which the Department will use to determine the need for new leasing.

- Is there any difference between this approach and that used under Secretary Watt?

ANSWER: The specific changes to the procedures for determining sales schedules, leasing levels and lease offerings have not been developed. The changes will be implemented by December 31, 1984. However, any procedures that are adopted will continue to utilize a market analysis, recommendations from the RCT and advice from the affected State Governors.

QUESTIONS CONCERNING THE DEPARTMENT OF THE INTERIOR
COAL LEASING REVIEW FROM SENATOR LEVIN

Question 1: Is it your opinion that the Department did, or did not receive fair value for the Powder River leases?

Do you believe that the problems of the Powder River Sale were entirely a matter of individual mismanagement or misconduct, or do you believe that the failure of the sale resulted from the application of mistaken procedures and a rigid dedication to high leasing levels?

In light of the Commission's conclusion that you "probably did not receive fair market value" (Linowes p. 536) which reinforced the earlier conclusion of the GAO on the same topic, do you plan to reject any of the Powder River leases?

In your letter of transmittal, you mention the Department's ongoing investigation of the various allegations of mismanagement and misconduct on the part of individual officials in connection with the Powder River Sale. Can you tell us something about these investigations? Who is conducting them? How far along are they? Do they include questions of potential criminal misconduct? Have you arrived at any conclusions?

Answer: My review of the Commission on Fair Market Value Policy for Federal Coal Leasing report convinced me that the Department had to address two distinct sets of issues: (1) programmatic issues involving coal leasing procedures to determine whether coal leasing shold occur, to calculate the amount of coal that should be leased, and the conduct sales; and (2) the conduct of individual employees in specific lease sales and the adequacy of the Departmental review of their conduct.

In my judgment, each of these issues required a separate and independent review. The review of programmatic issues culminated in my March 19, 1984, report to Congress.

The examination of the individual conduct issues and the investigation of that conduct is being conducted by Deputy Under Secretary Paul Trause under the general direction of Under Secretary Ann McLaughlin. The staff working with Mr. Trause have been detailed to the Department of Interior from the Treasury Department, Internal Revenue Service and the Department of Commerce. These individuals, career civil servants, have had extensive experience in conducting this type of inquiry.

The results of our review of employee conduct do not relate to and should not affect the proposed procedures for future sales. These procedures have been thoroughly examined in the Department's March 19, 1984, report. I do not believe that it would be in the best interests of the Department or of the United States to require that resumption of the program should await completion of the examination into individual conduct.

We expect to complete our review of the investigation conducted

by the Inspector General by the end of May. The completion of the review will depend upon the findings concerning the Inspector General's investigation. Of course, any indication of potential criminal misconduct will be referred to the Department of Justice.

If this determination evidences that activities in the Powder River lease sales reached the threshold of probable illegality, I have the power to cancel the leases. In that regard, I will follow the law and exercise proper duty in setting aside illegal leases, if any. However, because of pending litigation, it would be inappropriate for me to comment further on the specifics of the Powder River sales.

Question: 1. What is the status of upcoming sales? Will existing environmental impact statements in these sales be suspended in light of your pending review of the coal program?

Answer: There are no sales scheduled. A number of factors need to be considered before any decisions on whether to hold coal lease sales can be made. A careful evaluation of relevant market conditions must be made, advice from the Federal-State Coal Advisory Board must be solicited at its annual meeting, and each regional coal team must be allowed to make its recommendation before the Department's decisions can be made.

As long-range regional coal schedules become more certain, we will review each of the regional coal EIS's, regardless of its state of development. If this review indicates the need for change, the regional EIS's will be updated to fully comply with NEPA.

QUESTION: 2. Do you believe that the current sales pending are supported by adequate coal resource data? If no, would you consider asking for more money to supplement existing data?

ANSWER: No decisions on coal lease sales will be made until the review of the Federal coal management program is complete. The adequacy of coal resource data on tracts considered for lease offering is a part of this review. In order to make a complete economic evaluation of the tracts, a given level of information must be available. The Commission recommended and the Department concurred that the Department should reestablish a Federal drilling program. Such a program will enhance the Department's ability to evaluate the Federal coal estate. We are currently evaluating budget needs as part of our process of developing this effort.

THE SECRETARY OF THE INTERIOR

WASHINGTON

June 1, 1984

Honorable John W. Warner
United States Senate
Washington, D.C. 20510

Dear Senator Warner:

During the Senate Energy and Natural Resources hearing on April 5, 1984, you inquired about how the Department planned to implement the Linowes Commission recommendation regarding fee land exchanges of coal tracts.

We have informally discussed an anti-trust review of fee coal exchange transactions, comparable to those conducted under section 15 of the Federal Coal Leasing Amendments Act, with the Department of Justice. It appears that the format for review of Federal coal leases will suffice for review of fee coal exchanges, with a slight modification. The forms presently in use for leasing provide for a proposed lessee to submit data on the total in-place tonnage of coal presently under its control and the in-place tonnage it will acquire through the lease. An exchange review will require an additional form showing the in-place tonnage of coal the non-Federal party will give up in the exchange. Correspondence that will begin a formal dialogue on this issue with the Department of Justice has been prepared.

Implementation of a Justice Department anti-trust review of fee coal exchanges should have very little effect on future fee coal exchanges before the Department. The same basic planning and environmental studies that are required for coal leasing are also required for fee coal exchanges. Such review, no doubt, will make fee coal exchanges more acceptable to the public.

Thank you for allowing me to clarify this particular matter and please let me know if I may offer any further information.

Sincerely,

William Clark

THE SECRETARY OF THE INTERIOR
WASHINGTON

June 1, 1984

Honorable Wendell H. Ford
United States Senate
Washington, D.C. 20510

Dear Senator Ford:

During the Senate Energy and Natural Resources hearing on April 5, 1984, you asked for a copy of the proposed procedures the Department has developed to implement the recommendations discussed in the "Review of Federal Coal Leasing".

The March 19, 1984, response to Congress on the Commission Report broadly outlined the steps which the Department will take to implement the Commission's recommendations. Detailed procedures and guidelines for implementing my proposals are now being developed and, over the next several weeks, will be finalized for publication. A copy of our implementation schedule showing key work elements and target dates for completing each objective/recommendation is enclosed. As indicated in my March 19, 1984, response to the Commission Report, I expect to have in place by December 31, 1984, a decision-making process which will allow a responsible determination of whether specific lease sales will be in the national interest.

In addition, at the hearing you asked that I provide you with a list of the 68 action items identified in the Linowes Commission report. Please find the list enclosed.

I hope you find this information useful. If you need further information, please let me know.

Sincerely,

Bill Clark

William Clark

Enclosure

COAL PROGRAM REVISIONS IMPLEMENTATION SCHEDULE

April, 1984

NO. 5

ADMINISTRATIVE ACTIONS

APPRAISAL PROCEDURES

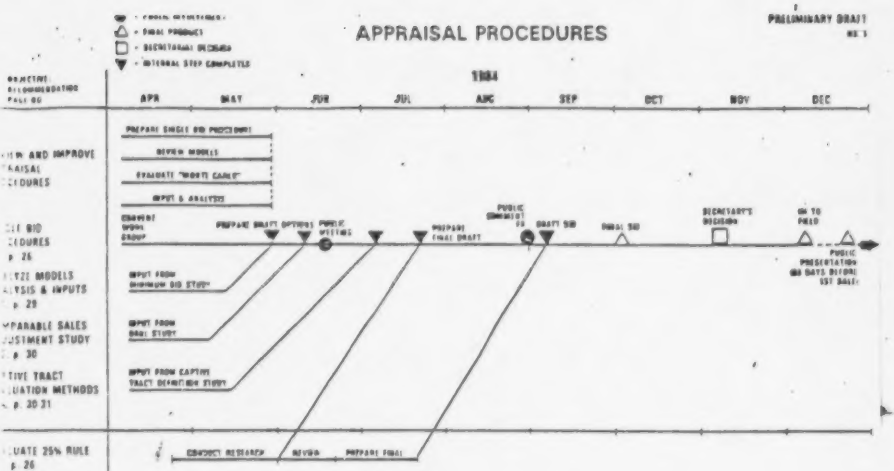
TRACT DELINEATION

SALE PROCEDURES

MARKET ANALYSIS

REGIONAL SALES/PRLA'S

37-071 O—84——17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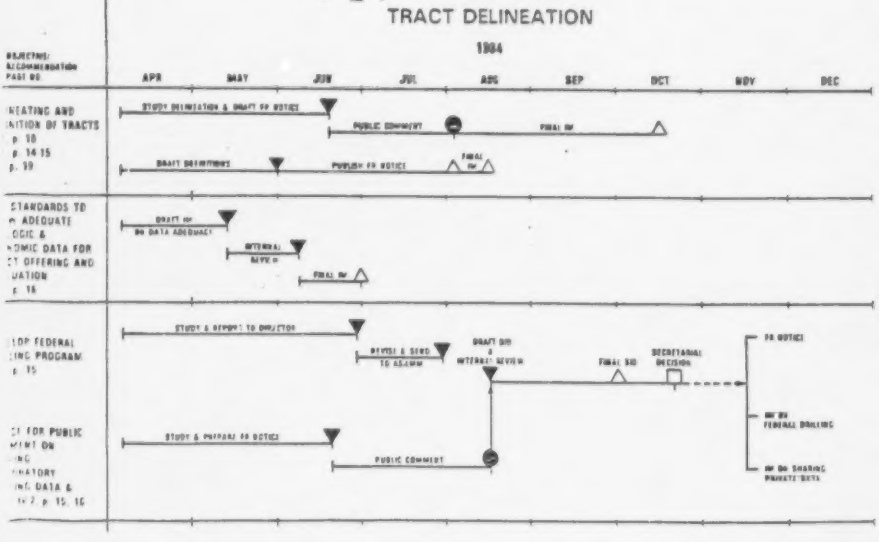
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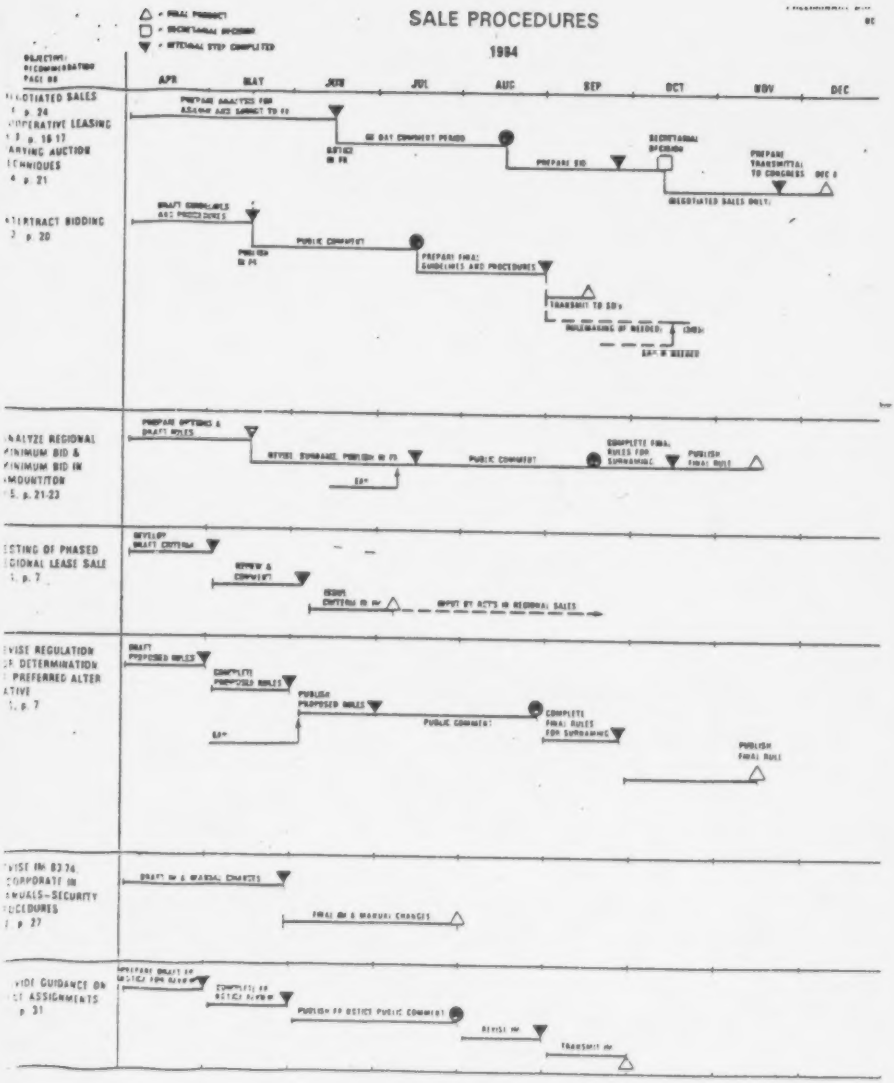
SALE PROCEDURES
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PREPARE TRANSMITTAL TO CONGRESS
DRAFT GUIDELINES AND PROCEDURES
PUBLIC COMMENT
PREPARE FINAL GUIDELINES AND PROCEDURES
TRANSMIT TO SS's
PREPARE OPTIONS & DRAFT RULES
REVIEW, SUBMARINE, PUBLISH IN FR
PUBLIC COMMENT
COMPLETE FINAL RULES FOR SUBMARINE
PUBLISH FINAL RULE
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FINAL IM & MANUAL CHANGES
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PUBLISH FR NOTICE PUBLIC COMMENT
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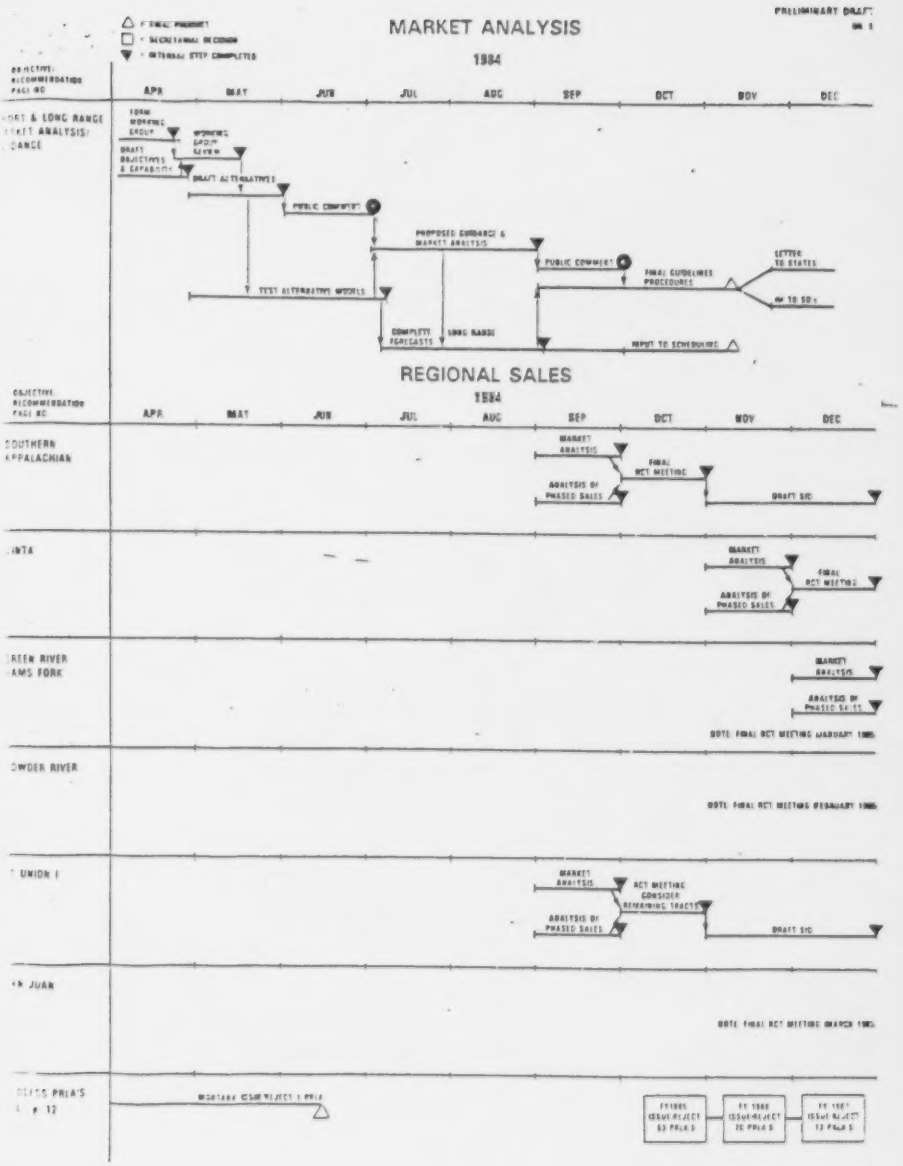
PRELIMINARY DRAFT
MARKET ANALYSIS
1984
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PUBLIC COMMENT
PROPOSED GUIDANCE & MARKET ANALYSIS
PUBLIC COMMENT
FINAL GUIDELINES PROCEDURES
TEST ALTERNATIVE MODELS
COMPLETE FORECASTS
INPUT TO SCHEDULING
REGIONAL SALES
1984
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DEC
SOUTHERN APPALACHIAN
MARKET ANALYSIS
FINAL ACT MEETING
ANALYSIS OF PHASED SALES
DRAFT S/O
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ANALYSIS OF PHASED SALES
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NOTE: FINAL ACT MEETING MARCH 1985
FY 1985 ISSUE PROJECT 53 PRLA'S
FY 1986 ISSUE PROJECT 70 PRLA'S
FY 1987 ISSUE PROJECT 12 PRLA'S

page 11, line 23

The following are the 68 action items that did not culminate in formal recommendations by the Commission. The action items are referenced to the Commission Report by Chapter and page number.

III-1 ° The Department will maintain a long range (five year) planning schedule (p. 4).

° The Department proposes providing a long ranye planning schedule for review at Federal-State Advisory Meeting (p. 5).

° Advice will be requested from RCTs concerning regional planning schedules and environmental consequences (p. 5).

° Recommendation will be sought on long range schedule from Federal-State Coal Advisory Board (p. 5).

° As a part of this effort, BLM will regularly report projected coal market conditions to the Board (p. 5).

° BLM will propose guidance for setting coal leasing levels by September 1, 1984 (include Commission considerations set out on pp. 5 and 6) (p. 6).

° BLM will evaluate the proposed sale offering fully to determine how the most recent economic or other considerations affect the proposed sale. This evaluation will consider relevant market conditions set out on p. 6. BLM will make this evaluation part of the Record of Decision (p. 6).

° The Department will select a preferred leasing alternative at the time of tract selection (p. 7). BLM will propose regulation amendment by June 15, 1984.

° Factors set out on p. 6 will be evaluated immediately prior to the publication of the sale notice which occurs about 30

- The Department believes that phased sales may have merit and will consider the design of a test of this method as part of a future lease offering (p. 7).

III-2 - The Department has and will continue to support State representation on RCTs (p. 8).

- The Department will continue to work with and through RCTs and the Federal-State Coal Advisory Board to develop appropriate leasing schedules and appraisal methodologies (p. 8).

- The Department will seek the recommendations of the Federal-State Coal Advisory Board on the long range planning schedule (p. 8).

- The RCTs will retain a significant advisory role in the establishment of regional coal leasing levels and tract selection (p. 8).

- The RCTs should solicit the views of the public at each key decision point, and should consider the use of newsletters and other memorandums for communicating with the public (p. 8).

- The Department will encourage State staff support of RCTs on a sale-by-sale basis (p. 8).

- The Department will use RCTs as a tool for Federal-State conflict resolution (p. 8).

- A Washington representative will be assigned to work with each RCT as an ex officio member (p. 8).

III-3 - The Department directs RCTs to consider factors set out on p. 9 in developing leasing levels (p. 9).

II-4 None.

II-5 ° The Department is prepared to consider a variety of measures aimed at different program objectives in setting leasing levels (p. 11).

° The Department will review the findings of the final OTA report and within 45 days of receipt, report to Congress (p. 11).

II-6 ° BLM will complete processing of most PRLAs within the next two years (p. 13).

° PRLAs are to be considered in establishing leasing levels and coal planning schedules with consideration of factors (set out on p. 13) (p. 13).

hapter 4:

V-1 ° BLM will study and list factors assessing degree of competition in the process of tract delineation and selection. These factors will be developed and offered for public comment by June 15, 1984. These factors will include tract size, ownership patterns, and the expectation that the tract will not create a future bypass or captive situation in addition to the considerations contained in Recommendation III-4 (p. 14).

° BLM will develop and offer for public comment by June 15, 1984, proposed procedures for assessing alternative tract configurations. One procedure that BLM will consider is offering alternative tract configurations using the same parcels of land (p. 15).

-2 ° The Department proposes it will sponsor more Federal Government drilling as well as encourage private sector drilling (p. 15).

° The Department is anxious to obtain public comment on sharing exploratory drilling results (and costs), and the effect it will have on the willingness of firms to undertake exploratory drilling (pp. 15-16).

° BLM is about to issue instructions ensuring ongoing evaluation of tracts to determine coal data adequacy (p. 16).

V-3 ° BLM is being directed to identify and pursue aggressively cooperative leasing opportunities and present these opportunities to the RCT (p. 17).

V-4 ° Amend I.M. 84-81 concerning fee exchange policy by June 15 by adding an explicit condition dealing with environmental concerns (p. 17).

° Formalize or establish a method to submit proposed fee coal exchange to the Department of Justice for antitrust review (p. 17).

Chapter 5:

V-1 ° The Department proposes to formalize definitions for maintenance and bypass tracts to distinguish captive, single-bidder tracts, whether or not they are new production tracts, from potentially competitive tracts . . . to be adopted by August 31, 1984 (p. 19).

° Following adoption of the formal definitions, all tracts delineated shall be classified and fully described in these

terms in all coal leasing decision material for RCTs and the Department (p. 19).

V-2 None.

V-3 ° Amend previously developed procedures to govern intertract bidding so that only the bids on tracts awarded will be made public (p. 20).

° Develop and publish draft guidelines to define circumstances in which intertract bidding is appropriate, which provide intertract bidding will be considered only after the Department receives the aadvice of RCTs and the effected State Governors, by June 15, 1984 (p. 20).

V-4 ° Request public comment and consider experimentation with a variety of auction techniques (p. 21).
NOTE: If implemented, would probably require regulation change.

V-5 ° Solicit and analyze public comment on regional minimum bids and on expressing such bids an an amount per ton as a tentatively preferred option before promulgating a final rule. (Include discussion of considerations on pp. 21-23.) (pp. 21-23)

° Evaluate the actual impact of the use of (¢/ton) measure after the next coal lease sale and consider whether it should continue to be used (p. 23).

V-6 ° The Department requests public comment, on the possible conceptual approaches (see Approaches 1-3, p. 25) to negotiated sales, which will be published by June 15, 1984 (p. 24).

- Work with Congress to determine whether a feasible negotiated sales approach can be defined (p. 24).

V-7
- Continue to use industry bids in deciding to accept or reject bids for multiple-bid and single-bid tracts (p. 26).

- PPA to evaluate current requirement that bids used in the post-sale appraisal process must be at least 25 percent of the pre-sale appraisal by July 31, 1984 (p. 26).

- Keep knowledge of amounts bid on single-bid tracts from the evaluation team until they complete their reappraisals (p. 26).

- Document and make available the proposed sale appraisal procedure for public comment by September 1, 1984, incorporating the points made above (p. 26).

V-8
- Update and incorporate BLM Directive I.M. 83-794 regarding security into appropriate manuals by July 31, 1984 (p. 27).

- Responsible officials will ensure security procedures are reviewed prior to each lease sale to ensure proper sensitivity (p. 27).

- Provide employees in advance of each sale with training on security requirements and knowledge needed to implement them (p. 27).

Chapter 6:

VI-1
- The Department will accept the Commission's suggestion that it evaluate the use of "Monte Carlo" techniques and compare

its Coal Resource Economic Value (CREV) model against other similar models (p. 29).

° The Department will evaluate model design and input data by December 30, 1984 (p. 29).

VI-2 None.

VI-3 ° The Department will continue to seek professional comment and guidance on Federal appraisal techniques (p. 30).

° The Department concurs that captive tracts be assessed on the value to the adjacent mine or lease holder (p. [illegible]).

VI-4 ° The Department seeks public comment on how this value should be assessed and will highlight it in the Department's draft uniform appraisal methods to be made public by September 1, 1984 (p. 30).

VI-5 ° The Bureau of Land Management will submit for public review by June 15, 1984, specific guidance for its field offices on the information required for approval of lease assignments (p. 31).

VI-6 None.

VI-7 ° The Bureau of Land Management has been directed by June 30, 1984, to develop a plan, including cooperation with the U.S. Geological Survey and other agencies, to increase the number of highly competent mineral appraisal personnel, improve the professional capabilities of currently employed personnel, and consider the use of private sector appraisal expertise (pp. 32-33).

° The Department will request the Office of Personnel Management to examine pay comparability between the public and private sectors for mineral appraisers and other key mineral professionals and the possibility of treating them as shortage occupation categories (p. 33).

Chapter 7 None.

Chapter 8:

VIII-1 ° The Bureau of Land Management will complete the process of strengthening its economic evaluation expertise gained through MMS merger by June 30, 1984 (p. 42).

VIII-2 ° Policy development and guidance procedures will be placed in a centralized, coordinating group in the Washington office (p. 43).

° This group will have as one of its first tasks primary responsibility for developing uniform appraisal policies and methods recommended by the Commission (p. 43).

° BLM is realigning the Washington office to emphasize economic analysis function (p. 43).

° By August 31, 1984, BLM will develop for regional evaluation teams the following: organizational chart position descriptions, delegations of authority, regional team office functions, and staffing revisions (p. 43).

VIII-3 ° BLM's centralized coordinating group for economic evaluation will compile a uniform appraisal method in a single document

by September 1, 1984, and make it available for public comment (p. 43).

° The Washington office responsible for economic evaluation will continue to focus on and refine appraisal techniques (p. 43).

° The above procedures will be implemented Bureau-wide (p. 43).

° The Department is taking implementation steps to assure the presence on sales panels of persons with background to make appraisal judgements (p. 44).

VIII-4 ° The sales panel will examine whether the pre-sale appraisal process was appropriately followed and whether fair market value was received (p. 44).

° The Department will publish qualifications for panel membership by June 15, 1984, and will consider mandatory participation by individuals listed on page 44 (p. 44).

VIII-5 ° The Department will request the Inspector General to conduct peridoic audits of the program (p. 45).

° The Department will work toward integrating oversight functions into internal program management under OMB Directive A-123 and the Federal Manager's Financial Integrity Act (with outside contractors as necessary) (p. 45).

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